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ABSTRACT

This report analyzes state statutes authorizing a new approach to the organization of elementary and secondary education in the public sector, the "outcome-based," "contract," or, as it is now commonly called, "charter school." Charter school statutes create an alternative legal framework for the formation of public schools by permitting a state education agency to grant an individual public school some degree of autonomy from central control over critical decisions of accountability for educational results in return for the school's acceptance of some degree of accountability for educational results. Charter schools compete directly with district-run schools for students and funding, and this competition is intended to raise the quality of public education for all. This report provides a comparative analysis of the charter school statutes of 11 states. First it examines the expressions of legislative intent, and then the more salient features of charter school legislation are discussed, comparing the various statutory provisions. The report then analyzes some of the tensions between autonomy and accountability, and discusses key issues legislators must address. The report also addresses potential tensions between charter school autonomy and the values of public education. Finally, the paper discusses key provisions of a proposed draft model developed in the course of this study. The guiding assumption of this model is the need to balance the goals of autonomy and accountability while maintaining the core values of public education. The state statutes are attached. (Contains 36 tables.) (SLD)

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UW/RAND
Program on Reinventing Public Education

Autonomy, Accountability, and the Values of Public Education:

a comparative assessment of charter school statutes leading to model legislation

Marc Dean Millot

September, 1996

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Christine Campbell
CRPE

[illegible]

Institute for Public Policy and Management
University of Washington
Box 353060
Seattle, WA 98195
Tel: (206) 685-2214
Fax: (206) 616-5769
www.gspa.washington.edu/CRPE/crpehome.html

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For more information on the Center or other publications, contact:

Center on Reinventing Public Education
Institute for Public Policy and Management
University of Washington
P.O. Box 353060
Seattle, WA 98195

Tel: (206) 685-2214
Fax: (206(616-5769
http://www.gspa.washington.edu/CRPE/crpehome.html

Dr. Paul Hill, Director
Robin Lake, Associate Director

PREFACE

This report was written for a very specialized audience—individuals considering the passage or amendment of charter school legislation, including: state legislators; policymakers in state education agencies; and the legislative staffs of such interest groups as teachers' unions, parent-teacher associations, business groups involved in public education, and state associations of superintendents and school board members. Charter school applicants and operators may profit from the report's discussion of issues affecting a school's autonomy and accountability, but the report is intended to analyze and improve charter school legislation.

The research on which this report is based was funded by the New American Schools Development Corporation (NASDC) and The RAND Institute for Education and Training (IET) project on School Reform Strategy, a systems analysis of innovation in the governance of public education.

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Despite this aid, I am responsible for any sins of omission or commission contained in this report.

SUMMARY

This report analyzes state statutes authorizing a new approach to the organization of primary and secondary education in the public sector—the "outcome-based," "contract," or, as it is now commonly called, "charter" school. This approach has been motivated by a belief that the statutory framework of the traditional system of public schools impedes the delivery of high quality educational services to the nation's children. In the traditional school system, individual schools have no independent significance; they are merely administrative units of a larger education agency—the school district. The individual school is not the master of its fate. Critical decisions affecting its performance, including curriculum, pedagogy, personnel, and budgeting, are made by centralized state and district education bureaucracies, or result from collective bargaining agreements between local school boards and public sector labor unions for the entire school district. It is not reasonable to hold individual schools accountable for educational outcomes because the traditional system was not designed to foster initiative or responsibility at their level. At the same time, centralized decision processes tend to result in uniform policies that do not meet the particular needs of specific schools and student groups.

Charter school statutes create an alternative legal framework for the formation of public schools. They are intended to place more of the responsibility for educational outcomes and the control of key decisions with individual schools. Charter school legislation permits a state education agency (e.g., a local school board, the state board of education, or a state university) to grant an individual public school some degree of autonomy from central control over critical decisions affecting the school's performance, in return for the school's acceptance of some degree of accountability for educational results. The expectation is that this "system of schools" will be more responsive to children's educational needs than the traditional school system. Charter schools compete directly with district-run schools for public school students and public school funding. The competition is intended to raise the quality of public education overall.

The essential features of this new school system were first established in Minnesota. In 1991, that state adopted a statute allowing the formation of public schools that would be given autonomy from most forms of state and district control in return for accepting accountability to a local school board for the educational outcomes of their students. The precise nature of this "basic bargain" between the individual school and the district was to be negotiated between the charter school and the school board, and embodied in a contract. Although not described as such, the arrangement was in effect chartered by the state, as the school board was required to receive approval for the contractual terms it would agree to from the state board of education.

PURPOSE AND APPROACH

Since passage of the Minnesota initiative, similar proposals have been introduced in at least 15 states. By the middle of 1994, charter school legislation was on the books in Arizona, California, Colorado, Georgia, Kansas, Massachusetts, Minnesota, Missouri, Michigan, New Mexico, and Wisconsin. Each state has dealt with the details of the basic bargain of autonomy for accountability differently.

This report provides a comparative assessment of the 11 charter school statutes noted above. It addresses four overarching questions:

- What is the basic intent of charter school statutes?
- What provisions have legislatures adopted to realize this intent?
- What kinds of tensions appear among the different provisions?
- How should a model statute attempt to resolve these tensions?

First, the report examines the expressions of legislative intent included in many of the charter school statutes. Of particular interest is the extent to which legislatures emphasize the autonomy or the accountability of charter schools. Next, the more salient features of charter school legislation are discussed. The various statutory provisions are compared and ranked in terms of the extent to which they support the objectives of individual school autonomy and accountability. The report then analyzes some of the tensions between autonomy and accountability, and discusses key issues legislators must resolve as they draft specific charter school provisions. The report also addresses potential tensions between charter school autonomy and the values of public education embodied in state and federal constitutional law, including the responsibility of state government to provide educational opportunities for its children, the prohibition on religious education, and the concept of public schooling as an entitlement. Finally, the paper discusses key provisions of a proposed draft model statute developed in the course of this study.

It is still too early to prove or disprove the basic proposition embodied in the charter school concept—that a system of independent public schools, given freedom from central direction and control in matters of curriculum, instruction, budgeting, and personnel, and held accountable for student outcomes, will improve student performance. However, it is not too early to examine how states prepare to test that proposition by analyzing how they have crafted their charter school legislation.

The author has often heard his colleagues remark that the devil of education reform lies in the details. This report is about those details. Moreover, this report is intended for a specialized audience interested in those details—individuals considering the passage or amendment of charter school legislation. For these reasons, this summary is intended to serve primarily as a road map to the report.

THE BASIC BARGAIN: AUTONOMY FOR ACCOUNTABILITY

Every charter school statute embodies a legislature's intent to give school organizers a relatively free hand in managing individual schools in return for accepting increased responsibility for student performance. This is the "basic bargain" of charter school legislation: autonomy for accountability.

School Autonomy

The extent to which an individual charter school is autonomous is a function of legislative decisions in three areas: (1) the nature and scope of the school's independent operation, including its legal status, self-governance, and freedom to make budgetary and personnel policies; (2) the process of becoming a charter school; and (3) the procedure for reviewing or revoking a school's charter.

The charter school statutes express the autonomy side of the basic bargain in what might be called "strong" and "weak" forms. The strong bargain emphasizes school independence. The California legislation provides one example of this approach. It states the legislature's intent "to establish and maintain schools that operate independently from the existing school district." Provisions found in other states' statutes that afford strong autonomy include mandates for budgetary, personnel, and curricular independence from state and local entities.

The weak bargain offers a more narrow measure of self-government. For instance, the New Mexico statute expresses the legislature's purpose "to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods and to enable individual schools to be responsible for site-based budgeting and expenditures," but the schools remain part of the local district and under the control of the local school board. The weak form may also include restrictions on the process of becoming a charter school, limitations on the term of the charter, and provisions for revoking the charter on the basis of subjective judgments.

School Accountability

Along with the legislature's grant of autonomy to the charter school comes the requirement that the school assume accountability for student performance. An analysis of accountability examines the nature of the school's responsibility to the public and the means by which the school's obligations are monitored and enforced. Accountability is affected by provisions in three areas: (1) the process of becoming a charter school; (2) the monitoring of a school's ongoing operations; and (3) the possibility of charter revocation and renewal.

Statutes encompass a number of measures to foster charter school accountability. The major areas include:

- requiring explanations of the school's proposed educational program, including curriculum and instructional strategies;
- requiring demonstrations of community support for a proposed school;
- setting goals for student and school achievement by specifying educational outcomes, performance measures, and means of accounting for performance;
- requiring formal descriptions of the proposed school's plans and policies governing such areas as financing and programs, admissions, discipline, legal liability and insurance coverage, and health and safety;
- monitoring school operations through requirements for annual reports and state agency reports; and
- limiting the duration of charters and providing conditions for the renewal and possible revocation of charters.

TENSIONS AMONG THE GOALS OF CHARTER STATUTES

Conflicts between the autonomy and accountability aspects of charter school statutes are noted throughout the report. Every statute handles these tensions differently, in some cases erring on the side of accountability, in others favoring autonomy. It is possible to devise charter school statutes that emphasize accountability to the point where the school lacks effective control of its educational program. It is also possible to grant the charter school so much freedom that it cannot be held accountable for its operation. Charter school autonomy is compromised to the extent that statutes allow approving authorities to deny charters at their discretion, although the exercise of such discretion clearly makes the schools highly responsive (i.e., "accountable" to approving authorities). Charter school accountability is compromised to the extent that statutes fail to define clear standards of school performance in the area of educational outcomes, although the lack of such standards clearly expands the scope of a charter school's freedom from outside interference (i.e., its autonomy).

Charter school legislation should create a workable mix of accountability and autonomy that encourages the development of a more effective public school system. This report explores tensions between the autonomy and accountability sides of the basic bargain embodied in the charter school statutes, as well as the tensions between autonomy and the values of public education. The objective is not only to describe these conflicts, but to suggest how balances between these sometimes competing values might be embodied in future charter school statutes.

Autonomy vs. Accountability

Underlying the proposed resolutions of the conflict between autonomy and accountability is an assessment that the best method for arriving at the correct balance between these values in any provision of a charter school statute is to judge each value (as reflected in the provision) in terms of its effect on the other value. Provisions should provide levels of autonomy sufficient to hold the school accountable for educational results. They should also provide levels of accountability that do not unnecessarily constrain the school's ability to control decisions of fundamental importance to its success or failure.

The report's comparative analysis of charter school legislation highlights those statutory provisions where tensions between the goals of autonomy and accountability are most likely to surface. The provisions of greatest interest include those dealing with:

- the approval of a charter school contract;
- the description of a charter school's approach to self-governance;
- the use of state-mandated performance standards and tests;
- the extent of district oversight of school finances; and
- duration of the contract and the criteria for charter renewal and revocation.

Approval of a Charter School Contract. Perhaps the most subtle influence on autonomy and accountability appears in provisions dealing with the approval process. On one hand, the need for accountability justifies subjecting charter school applications to close scrutiny. On the other hand, the scope of negotiation between applicant schools and government bodies responsible for approving charter school applications—local school boards in most statutes—is quite broad and tends to favor the approving authority, particularly where an appeals process is lacking. In all charter school statutes, approving authorities are empowered to exercise considerable discretion and employ subjective criteria in deciding whether or not to grant a charter. This bargaining leverage may force applicants to yield on contractual provisions that affect the charter school's operational independence (i.e., its control over curriculum, budgeting, personnel, and other key decisions affecting its prospect of success). Accountability would be served equally well if approving authorities were obligated to approve an application that conformed to a set of objective statutory requirements, and autonomy would not be jeopardized.

Charter School Self-Governance. The public has a right to understand how important decisions concerning curriculum, budgets, hiring, etc. will be made by a charter school, and to be confident that such decisions will not be subject to arbitrary or ad hoc processes. Requiring that charter school proposals describe a school's decisionmaking process promotes accountability, but specifying the content of that process can threaten autonomy. For example, several statutes require certified teachers to constitute a majority of the charter school's decisionmaking body. This requirement narrows the range of acceptable charter school proposals to those teachers are willing to promote.

By requiring charter schools to establish themselves under a state's non-profit or business corporation statutes, ad hoc and arbitrary decision processes will be avoided, and clear lines of authority maintained. Approving authorities are afforded an unambiguous benchmark for the charter school's subsequent compliance with the decisionmaking terms of its charter. At the same time, these statutes are flexible enough to accommodate a wide range of decisionmaking arrangements, and a substantial body of law exists from which to draw guidance in making subsequent decisions on the school's ongoing operations.

The Use of State-Mandated Student Performance Standards. Charter school advocates believe they can improve on the traditional school system's educational outcomes. Accountability demands some means of measuring the performance of students educated at charter schools and comparing it with the performance of students in other public schools. But if the tests are designed in such a way that they dictate what, when, and how a student must be taught, the charter school's autonomy will be limited. One means of managing this tension between accountability and autonomy would be to allow the charter school to pick from an array of standards and tests approved by the state board of education or even by the legislature. A reasonably broad array of standards and tests would give school designers greater autonomy in determining their school's educational program and maintaining the school's accountability for student achievement.

Local School District Oversight of Charter School Finances. Requiring charter schools to submit their planning budget to an approving authority prior to approval of their contract supports the approving authority's ability to judge the economic viability of the proposed school and the financial planning skills of the applicants. On the other hand, requiring the charter school to submit its annual budget to a school board for approval severely undermines school autonomy. This approach to fiscal accountability promotes micro-management of the charter school's educational program by the approving authority and threatens charter school managers with the very rules and regulations that are alleged to strangle reform within the traditional school system. Rather than requiring charter schools to submit their annual budget to a government agency, they could be obligated to provide it to the public and the press for comment at an open meeting of the school's governing body. This exposure will promote the kind of public debate and interest on which accountability should rest, without unduly jeopardizing the charter school's ability to devise the educational program for which it proposes to be held accountable.

Contract Duration, Revocation, and Renewal. Most charter school statutes prohibit contracts of more than three or five years. Limiting the duration of a charter school's contract promotes accountability but constrains autonomy. By establishing a certain date when the organizer's right to run a charter school will terminate, unless the approving authority takes a positive action to renew the charter school contract, organizers are given a very strong incentive to meet their contractual obligations. A short contract period, however, may induce caution on the part of school organizers, as well as approving authorities, and discourage "risky" innovative designs. As a result, the schools that are approved and do succeed may not depart too far from tradition in either their pedagogy or their real autonomy from local school authorities. The actual autonomy of such charter schools is arguably illusory.

The right of an approving authority to revoke a contract on the basis of subjective criteria creates similar problems. If a contract can be terminated despite adherence to the terms of the agreement and without any legal violations, the school is at a serious disadvantage in its relationship with the approving authority. This pressure may influence the school to conform to traditional norms of public schooling and can affect the content of day-to-day interactions between the school and the approving authority in ways that limit the school's autonomy. If instead, retention of a charter school's contract is based on achieving objective student performance standards, observing the law, and regular audits, the school can be held responsible for its performance without jeopardizing the authority granted to the school to take actions to achieve those results. Such an approach would allow charter school contracts of indefinite duration, promoting both autonomy and accountability.

Autonomy vs. the Values of Public Education

To the extent that charter school advocates accept accountability for purposes other than assuring educational results and financial responsibility, they tend to emphasize the need for charter schools to operate as public schools, in conformity with the values of public education embodied in the federal and state constitutions. In order to balance autonomy with the values of public education in charter school legislation, the values must first be distinguished from the means traditionally chosen by the legislature to further those values. The values must be maintained, but the means of institutionalizing those values can change.

Today's institutions of public elementary and secondary education are deeply entrenched in American public life and our collective memory. Those values include schools that do not teach religion, are operated directly by local agencies of state government, are managed by boards of education on a not-for-profit basis, maintain open admissions for most students living in the same neighborhood (and exceptions to that general rule only for especially disadvantaged or gifted students), are staffed by public employees (who are often represented by unions on a district-wide basis), and employ teachers who hold state licenses certifying their qualification to teach. These characteristics collectively constitute the traditional public school system.

A review of the legal literature on public education suggests that three values of constitutional significance are central to public schooling. The first is that by creating a public system of schools which all children may attend, the state vests children with an entitlement to that education. Moreover, every child is entitled to equal access to equal educational opportunities. The second fundamental value of public education is that it is a responsibility of state government. Private persons may not interfere with the provision of government services. Thus, absent explicit authorization by the legislature, public school teachers may not strike. And because public education is a government responsibility, public school teachers are government employees, with all the rights and responsibilities of such employees granted by the state legislature. The third value is that public schools may not teach religion.

Once the values of public education are separated from the means of public education, it should become apparent that it may be possible to create new institutions of public schooling that are consistent with those values and the objective of charter school autonomy. The traditional system of public schools is not necessarily the only legitimate means of organization. No autonomy should be granted to individual charter schools that undermines the three basic values of public education discussed above, and as long as the autonomy granted does not impinge on the values of public education, it should not be barred.

The charter school statutes examined in this report generally support the notion that charter schools are public schools promoting the values of public education. Nevertheless, the goal of autonomy is occasionally in tension with those values. These tensions are most apparent in statutory provisions restricting the affiliation of charter schools with private schools and for-profit institutions, and in provisions regarding student admissions policies, labor relations, and teacher certification.

Private School and For-Profit Affiliation. Charter school advocates generally see no necessary contradiction between public education and private or for-profit charter schools. Nevertheless, few charter school statutes allow existing private schools to become charter schools or for charter schools to be run on a for-profit basis. However, if the private school seeking charter status must adhere to the same requirements as any other charter school and receives no more than any other public school in the way of payment for each student, the arguments against private schools have little merit. If all public school students are eligible to attend the converted private school and the possibility of over-enrollment is handled through an admissions lottery, the public in general will benefit regardless of any special benefits received by the school's students.

Traditional public schools are not profit-making institutions and there is some concern that if charter schools are allowed to make a profit, students will be short-changed or the public will be paying more than it should. This fear appears to be unfounded. If a charter school is able to meet its contractual obligations while providing an educational environment students enjoy, and is operated on the basis of open admissions and at a per pupil cost no higher than a school run by the local school district, it is difficult to see how the public would be ill-served. Indeed, the profit incentive may generate efficiencies at charter schools that could pressure the traditional public school system to follow suit—an outcome of some benefit to the taxpayer.

Admissions Policy. A distinguishing feature of public schooling is open admissions. The public expects that, aside from a few exceptional schools for the gifted or the disadvantaged, public schools are for mainstream students; attendance at these schools will be open to all students, and, regardless of the school (at least within any given district), students will receive an education of comparable value.

These expectations sometimes translate into statutory provisions that prohibit charter schools from limiting admissions on any basis. Many statutes prohibit a charter school from restricting admissions on the grounds of achievement or affinity. There seems to be a fear that these criteria will permit wealthy, sophisticated segments of the public to secede from the school system, leaving "rump" school districts with the overhead of central bureaucracies and services, the most problematic students, and inadequate resources.

Of course, certain forms of discrimination, such as those based on race or ethnicity, are unconstitutional. However, restrictions on student admissions are not per se violations of the values of public education reflected in state and federal constitutions, which is why traditional public school systems are already able to establish special schools for gifted students. Moreover, provisions prohibiting any restriction on admissions can undermine school autonomy. A charter school proposal built around language, arts, or athletics; group or interdisciplinary teaching; or a merger of students from different grades into a single class is designed to succeed with students who are compatible with that approach. Such schools may not succeed if they cannot exclude students who do not fit the given description. The result of statutory prohibitions on any restrictions in admissions criteria may be that the schools serving mainstream students are not easily distinguished from traditional schools operating as part of the district because they are forced to educate some mythical "normal" or "typical" student. In a practical sense, this places a limit on the autonomy of charter schools unable to depart significantly from the curriculum or organization of traditional schools.

Restrictions on admissions are far more objectionable on the basis of accountability for student outcomes and educational performance. Restrictions on admission based on academic ability create an unfair advantage for charter schools by permitting them to screen out less capable students that traditional public schools must accept. It should be no surprise if charter schools with such an admissions program perform better than their traditional counterparts. This suggests a distinction between discrimination on the basis of affinity with a particular program and discrimination on the basis of ability. While open admissions is desirable to prevent students from being screened out in such a way as to skew a charter school's performance in comparison with traditional schools, a charter school should be able to condition continued enrollment on the maintenance of reasonable affinity standards.

A different type of provision sometimes found in charter school statutes incorporates a bias in favor of approving schools designed to admit and serve "at-risk" students. Particularly where the legislation sets a cap on the number of charter schools, as most statutes do, this bias works to the detriment of mainstream charter school options. This bias undermines the autonomy objective because it tends to marginalize the charter school concept. A basic objective of charter school legislation is to challenge the public school system's operation of schools for mainstream students. School districts are already relatively willing to establish special programs that separate disadvantaged or problem students from the mainstream. In a practical sense, the autonomy of charter schools is constrained to the extent that the option is confined to educational programs aimed at students not served by traditional schools. The bias also suggests an attitude that runs counter to the public expectation that public schools are generally intended for mainstream students. By implying that charter schools should be considered special schools, provisions favoring schools for at-risk students deny educational opportunities to mainstream students who constitute the principal object of the public school system. In this respect, the bias undermines the concept of open admissions which constitutes a basic value of public education. Thus, from the standpoint of charter school autonomy and the values of public education, provisions incorporating a bias in favor of the approval of charters for schools designed to admit and serve "at-risk" students are unwarranted.

Labor Relations. In the public mind, public institutions are staffed by public employees. These employees owe the public certain obligations. For example, in most states, public employees do not have the right to disrupt the government's delivery of public services by resorting to strikes. In return, public employees receive certain assurances from the government, most importantly, the treatment of their jobs as entitlements subject to certain constitutional protections. In addition, public employees, including public school teachers, often have collective bargaining rights under state statutes governing public sector labor relations. Even where public employees do not have such rights, their salaries are often based largely on tenure and their positions protected according to seniority. In states permitting collective bargaining in public education, teachers negotiate with school authorities over wages, working conditions, and terms of employment on a district-wide basis.

Several of these features of public employment present obstacles to the autonomy of an individual charter school and particularly its managers. Schools responsible for student performance rather than educational inputs—schools whose very survival depends on producing results rather than following procedures specified by the state—must be able to reflect those requirements and incentives in the workplace. Management needs to be able to employ, advance, remove, and compensate teachers on the basis of competence rather than seniority. Unique schools residing within the physical confines of a school district should not be subject to the requirements of district-wide collective bargaining, and teachers in the

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school should be free to negotiate directly with their school managers. In the end, this last point is the most important. Whether they are treated as public employees working in the public schools, or as private employees working for an entity providing public education (e.g., open admissions, no tuition), charter school managers should be able to negotiate with the schools' teachers independently of the local school district.

Teacher Certification. To charter school advocates, teacher certification requirements represent precisely the kind of regulation charter school legislation is designed to avoid. A school whose students perform according to contractual standards should not be questioned about the educational qualifications of its teachers. A school whose students fall below those standards should lose its contract. On the other hand, the public officials responsible for approving charter school applications have a right to take into account the educational credentials or potential of the teaching staff proposed by the charter school applicant. An approving authority should be able to consider the number of certified teachers in a proposed charter school, but the fact that uncertified teachers will be employed at the proposed school should not automatically bar approval of a contract.

AN APPROACH TO A MODEL CHARTER SCHOOL STATUTE

This report concludes by presenting a model school statute. The model statute's guiding assumption is the need to balance the goals of autonomy and accountability while maintaining the core values of public education. Drawing on what the comparative analysis suggests is best in the existing charter school statutes, the model statute attempts to mitigate the tensions between autonomy and accountability, and between autonomy and the values of public education.

The analysis also suggests that the best strategy for balancing the different goals is to foster a high degree of operational autonomy conditioned on explicit, specific, and objective accountability standards. A persistent difficulty in much of the present legislation is the vagueness of accountability standards and the consequent granting of broad discretion to state and local authorities who can ultimately approve charter schools and then evaluate their performance according to subjective criteria. This broad discretion and the right to use subjective criteria tends to erode autonomy, which in turn can limit a charter school's ability to innovate and succeed.

The model statute embodies these principles in addressing the following areas:

- the legislature's intent in passing the statute;

- the scope of a charter school's autonomy;
- the process of applying for and approving a charter school;
- the process of renewing and revoking a school's charter.

Legislative Intent

The model statute promotes two fundamental objectives: First, to improve educational opportunities for students by increasing the number and types of public schools in their school district or state, and giving parents and students the ability to make choices among public school options based on the performance of individual schools; and second, to increase school's accountability for educational outcomes. The model statute offers a "strong" version of the basic bargain of autonomy for accountability. This features provisions to:

- create charters of indefinite duration;
- state explicitly that charter schools are "public" schools, required to have open admissions, tuition-free attendance, and a non-religious course of study;
- specify that charter schools are an innovation, not an experiment, created to foster real competition with centrally run district schools in order to improve the general level of public education throughout the state.

Scope of Charter School Autonomy

In order to grant as much autonomy as possible, consistent with the values of accountability and public education, the model statute creates charter schools that are independent entities in control of key decisions affecting their prospect of success. To accomplish this, the model includes provisions in several areas:

- A charter school is a public agency that sets its own budget, controls its personnel and the implementation of its approved educational program, and receives other essential supporting powers, such as the right to contract for goods and services and the right to acquire property. A charter school is managed by a board of directors, who are public agents for the purpose of managing the school.
- A charter school is exempt from all state and local regulations except those stated elsewhere in the charter school statute.

- The only restrictions placed on the charter school are those preserving the core values of public schooling.

- In the area of labor relations, charter schools are freed from requirements to negotiate with district-wide teachers' unions.

- To attract the support and participation of career teachers, the model statute provides a measure of job security to any teacher wishing (a) to leave a school converting to charter status in that district, or (b) to return to the district-run school system after working in a charter school. For the same reasons, teachers in charter schools are covered by the state retirement system.

- Teacher certification is handled in one of two ways. The preferred provision permits charter school managers to hire uncertified personnel for teaching positions. In those states where it is necessary for passage of the charter school legislation, the statute requires charter schools to hire certified teachers.

The Application and Approval Process

The approval process contained in the model statute is intended to provide objective standards for applications and their approval.

Application Process. Applicants must identify and describe themselves in detail in their application to an agency of state government authorized to grant charters. Applicants must include information about the form of organization proposed for the school; the proposed educational program; the performance standards the school is prepared to meet; the means of assessing school performance; the proposed financial plan for the school; and proposed plans to meet insurance, student discipline, and health and safety requirements. Specifically, applicants must address the following issues:

- **Student performance standards.** Two alternative provisions are contained in the model statute. The first requires applicants to choose from a list of standards (and complementary means of assessing each performance standard) contained in the statute or identified by a state education authority. The second alternative assumes a single set of student performance standards established by a state education agency that will apply to every student in the public schools. The single set may discourage certain charter school applicants with otherwise viable educational programs, but it would be easier to manage. Charter school applicants must also explain how the means of assessing student performance will be employed, and if the assessment identifies students performing below the chosen performance standard, how the school plans to respond.

- **School performance standards.** The model statute contains three possible provisions dealing with how a charter school's performance will be assessed. Option A has a set of standards written into the statute from which the applicant can choose. Option B allows the applicant to choose from a list of standards established by a state education authority. And Option C combines the two approaches, writing some standards into the statute, but allowing the school board to maintain a supplemental list.

- **Economic viability.** The model statute requires the applicant to demonstrate that the proposed charter school is economically viable. The charter school is more than an alternative educational program; it is an independent economic entity. Applicants should be required to demonstrate a keen awareness of this fact from the outset. The most important aspects of this requirement are the presentation of a multiyear budget and description of the contracts essential to start and operate the charter school. Applicants must also describe the management and audit procedures to help assure that the school's organizers will meet their fiduciary duties to taxpayers and parents.

- **Legal liability.** Charter school applicants are required to clarify the school's potential legal liability, based on the school's legal status and an analysis of the particularities of the educational program, facilities, transportation, and contractual arrangements that constitute the school.

- **Health and safety issues.** Schools also have a legal obligation to protect the health and safety of students, employees, and visitors at the school or under the supervision of school personnel. The model statute requires that charter school applicants explain how they propose to meet these obligations. Like many of the other provisions in this section, this requirement is intended to force the applicant to demonstrate competence across the full range of management issues related to the operation of an independent school.

- **Teacher and parent support for charter approval.** This provision concerns only public schools operated by the district that seek conversion to charter school status. It requires that supermajorities of teachers and parents with children attending the school vote in favor of conversion, provides for a means of giving public notice, and establishes that the charter school application must contain evidence of the favorable votes.

- **State assistance.** The model statute assures that the charter school alternative will become known to potential organizers and parents, and that some form of technical assistance will be made available to potential organizers. A state agency is given responsibility and authority to widely disseminate information about the program. In addition, the state agency is required to assist school organizers in drawing up their applications.

Approval Process. Under the model statute, an application approved by an appropriate agency of state government becomes the charter governing the school's operation. Furthermore, the charter incorporates the terms of the charter school statute itself. The model statute also requires that modifications to the charter be made according to the procedure established in this section. As noted below, this process places the initiative for changes in a charter squarely in the hands of the school, except to the extent that changes are initiated to avoid charter revocation.

A fundamental goal of the model statute is to make approval of charter school applications subject to an objective process. This section of the statute is intended to limit the discretion contained in most state charter school statutes that allow approving authorities to deny applications even in cases where applicants meet the specific statutory requirements for charter school status. Because a great deal of discretion has been removed, the model statute contains no strong preference as to the approval process, beyond the general requirements of providing interested parties with notice that an application has been received and will be considered by the approving authority at a public hearing where the applicant and interested parties have a right to be heard, establishing a clear timeline within which a decision must be rendered, and offering an applicant more than one chance to gain approval.

The section also calls for the creation of an accountability committee to assist the approving authority in its approval and oversight functions. The government authorities most likely to be given the power to grant charters are education agencies, particularly local school boards and state boards of education. These agencies' decisionmakers are likely to have only limited expertise in legal, financial, insurance, business planning, and other matters relevant to a new institution of public education. The accountability committee is intended to serve as a source of specialized expertise in charter schools. The statute is silent as to the size or membership of the committee, leaving it to the discretion of the approving authority to determine how it can best meet the requirements of the charter school statute.

The accountability committee will conduct a preliminary fact-finding investigation of each application and make a recommendation regarding approval. Charter school applicants will have the right to review and comment on the committee report and to meet with the committee during its investigation. Charter school applicants will also be permitted to engage in preliminary discussions with approving authorities and accountability committees to get a sense of the authorities' expectations and to compare alternative potential sponsors.

The model statute contains three alternative approval procedures. Option A allows a charter school applicant to seek approval from a number of independent sources. Option B provides for a single source of approval, such as the local school board where the charter school would be located, with a right of appeal to a higher education authority, probably a state board or department of education. Option C provides for a single source of approval, possibly at the state level, such as the state board or department of education. Whether an applicant's "second chance" for approval comes in the form of submission to another approving authority, or appeal to an administrative agency or court, the applicant is entitled to a new hearing. The choice among these options depends on the unique circumstances of the state considering the model statute.

Approval Criteria. The approval process contained in the model statute is guided by objective criteria. This does not entirely rule out discretion on the part of approving authorities; a certain amount of judgment is necessary to determine whether an application meets each criterion. However, no other criteria can be used by an approving authority, which furthermore is required to exercise due diligence and good faith in making its determinations. This limits the discretion of approving authorities to a far more narrow set of concerns than existing statutes. If an approving authority finds that an application meets the statutory requirements contained in this section, then it must approve the charter. This approach promotes autonomy by focusing the approving authorities' attention on objective factors essential to accountability, supports accountability by requiring the applicant and approving authority to seriously consider those factors essential to the likely success of the school.

These provisions require the approving authority to pass judgment on the educational promise, financial feasibility, management procedures, and potential exposure to legal liability of the proposed charter school, and (indirectly) on the qualification of the proposed school's organizers in various areas of education, school management, and business planning. The approving authority must research the history of similar schools and the experience of the organizers in managing those operations. Some of these activities are ministerial tasks, but most involve what are essentially business and legal judgments, bounded by professional standards and norms.

Reporting and Oversight

Annual Report. The school must produce an annual report containing information on student and school performance and financial data similar to that provided by publicly held corporations. The report must be submitted by the charter school to its approving authority, the local school board, the local library, and parents of children at the school, free of charge. The school must also make the report available to the public at large.

Government Audits. The charter school must give the state government's education and auditing agencies unobstructed access to the school and its records so those agencies can carry out their responsibilities to oversee public education and the expenditure of public funds.

State Agency Report. A state education agency is required to monitor and report on the school's program on a regular basis. School officials and the public have the right to review and comment on the report before it is officially released to the public.

Charter Review and Revocation

Review and Revocation Process. The model statute contains two alternative procedures for the review and revocation of school charters. The first corresponds with Options A and C in the above section on approval procedures, an applicant may be reviewed by a number of independent sources or a single source at the state level. The second is associated with the procedure for approval contained in Option B, an applicant may be reviewed by a single local source, such as the school board that approved the charter. Both alternative provisions also:

- make the approving authority responsible for ensuring that the school operates in accordance with the terms of its charter;
- provide the charter school with notice of potential charter violations;
- give the accountability committee responsibility for conducting an investigation into charter school operations;
- grant the charter school several opportunities to explain and defend its practices;
- establish a clear timeline for decision;

- require approving authorities to base their decisions on specific objective criteria;
- contain sanctions short of charter termination which allow the approving authority to intervene directly in the charter school's management;
- require that sanctions be directly relevant to the violations;
- provide charter schools with the right to appeal an approving authorities' decision.

Revocation Criteria. The criteria for revoking a charter parallel the model statute's approval criteria, but are focused on the extent to which the school's operation conforms to the application. Approving authorities may exercise some discretion, but they may not use any criteria other than the revocation criteria in the statute and must exercise due diligence and good faith in making their determinations. This limits the discretion of approving authorities to a far more narrow set of concerns than existing statutes. If an approving authority finds that a potential violation of the charter does not meet the standards required in this section, it cannot revoke the charter. The approach promotes autonomy by focusing the approving authorities' attention on objective factors essential to accountability. The approach supports accountability by clearly identifying the grounds for charter revocation.

These provisions are as important to preserving autonomy after charter approval as they are to assuring a charter school's accountability for charter provisions. Because they establish objective grounds for an approving authority to exercise its powers to directly supervise the school, these revocation criteria preclude intrusive or extensive regulation of ongoing school operations. Only the dysfunctional school can be subject to micro-management and the terms under which such a school can be subject to direct supervision only extend to matters directly relevant to the violations of the charter.

I. INTRODUCTION

> Charter schools are the latest and potentially most innovative means of injecting choice, competition, and improvement into the nation's public schools.
>
> The particulars vary from state to state, but essentially a charter is a contract that spells out alternative methods of governance, premised on deregulation, decentralized decisionmaking, teacher empowerment, and parental choice. Those alternatives are designed to provide schools with more control over fiscal, managerial, and curriculum decisions. There is an expectation this autonomy will stimulate innovation. This expectation derives from the market theory that allowing parents to choose schools forces schools to innovate to compete for students.
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> Marcella R. Dianda and Ronald G. Corwin, *Vision and Reality: A First-Year Look at California's Charter Schools* (Working Draft), Southwest Regional Laboratory, April 1994, 1.

STUDY OBJECTIVES

This report analyzes state statutes authorizing a new approach to the organization of primary and secondary education in the public sector—the "outcome-based," "contract," or, as it is now commonly called, "charter" school. It has two objectives. The first is to develop a detailed understanding of the specific provisions of actual charter school statutes and how these provisions interact to promote or stunt implementation of the charter school concept. The second objective is to draw upon these statutes to begin to develop model legislation that will allow a fair test of the proposition that a system of independent public schools can improve public education.

CHARTER SCHOOL CONCEPTS

Behind the charter school concept lies a conviction that the existing system of public schooling in America is antiquated[1] and fundamentally flawed, and a belief that the statutory framework establishing the traditional system of public schools impedes the delivery of high-quality educational services to the nation's children. Those who favor the charter school concept argue that under the current public school regime, in which the delivery of educational services by individual schools is centrally-directed by state and school district authorities, students are failing to learn what they need to know to compete in the world economy, and, more important, no one is held responsible for this failure.

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[1] See generally, Ray Marshall and Marc Tucker, *Thinking for a Living: Education and the Wealth of Nations*, New York: Basic Books, 1992 (hereinafter Marshall and Tucker).

Under the current statutory framework governing the public school system, individual public schools have no independent significance, they are merely administrative units of a larger education agency—the school district. The individual school is not the master of its fate. Critical decisions affecting its ability to improve students' educational performance, including curriculum, pedagogy, personnel, and budgeting, are made by centralized state and district education bureaucracies, or result from collective bargaining agreements between local school boards and public sector labor unions for the entire school district. Given these realities, it is not reasonable to hold individual schools accountable for educational outcomes—the traditional system was not designed to foster initiative or responsibility at this level. Similarly, public school teachers cannot be not held responsible because the state and school district tell them what to teach, when to teach it, and how it should be taught. At the same time, the school district and the state are too removed from individual students to be held responsible for the failings of any student or group of students. Yet centralized decision processes providing direction for all schools tend to result in uniform policies that do not meet the particular needs of specific schools or student groups.

Because they believe that central direction has failed so badly as a means of organizing the delivery of educational services to public school students, charter school proponents seek a profound change in the system of public schooling. Advocates support moving the authority for decisions concerning public education to the individual school, and holding those who manage the school accountable for student performance.[2] Charter school organizers also

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[1] Schools in the United States have been organized on the old industrial patterns since the 1920s, each successive layer seeing it as its task to tell the one below what to do and how to do it. It was assumed in the schools as it was in industry, that those on the bottom did not have the skills or knowledge to act independently in the best interest of employer or client. As a monopoly provider of education services, the system has had little incentive to improve the quality of the service or the efficiency with which it is provided.... No one was rewarded for meeting the needs of students, nor were there any penalties for anyone if they were not met. Teachers and other lower and mid-level staff members were mainly rewarded for loyalty to the system in general and their supervisors in particular.

Nothing has changed in this respect since the 1930s.... The only way to get higher performance and greater efficiency is to change the system root and branch....

The analogy to the restructuring of industry is straightforward. It begins with clarity about goals for the students: what the community expects students to know and be able to do when they leave high school. It requires the development of measures of student performance and a new curriculum that accurately reflects those goals. It assumes that many decisions now made by the state, the board of education, and the central administration about how to get the job done will be devolved upon the principal and the teachers, and that much of the intervening bureaucracy will go.

Marshall and Tucker at 111-112. Marshall and Tucker endorse the charter school concept at 141-142.

[2] The industrial model note above dominates discussion of the charter school option. "The difference between schools-as-usual and charter schools is like the difference between the old G.M. assembly line and the new Saturn team assembly," said Governor Jim Florio when he proposed charter school legislation for New Jersey." (The attempt failed.) Jerry Gray, "Florio Proposes Chartering of Parent-Teacher Schools," *The New York Times*, B-1, October 9, 1992.

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favor giving private persons with an entrepreneurial initiative the opportunity to operate individual public schools.

Charter school statutes accomplish these goals by establishing an alternative legal framework for the organization of public schools. The statutes make possible the establishment of a contractual relationship between an individual public school and a state government agency responsible for public schooling, such as a local school board or the state board of education. The "basic bargain" of charter school legislation involves a trade of autonomy for accountability. The state, by the grant of a charter, gives private individuals the right to operate public schools with substantial autonomy from state and local rules and regulations governing the delivery of education to public school students. In return, charter school organizers are held accountable to the state agency for some level of student performance. Organizers are also held accountable for operation of the school in a manner consistent with the values of public education embodied in state and federal constitutional law, including the concepts of public schooling as an entitlement and a responsibility of state government to the people, and the prohibition on religious education. The charter school governs itself, often with the direct participation of teachers in key decisions, and is funded by formulae similar to those for public schools operated by local school districts. A charter may be revoked if the school fails to meet its educational performance requirements or violates state laws governing health and safety, discrimination, and the use of public funds.

As a strategy for change in public education, the charter school concept relies on the application of market mechanisms to the public school system. Charter school advocates believe that if educational entrepreneurs, focused on student needs, are allowed to operate public schools, the quality of public schooling will improve overall. They expect that charter schools will be more responsive to children's educational needs than the traditional school system. They hope to establish a competition between the traditional centrally-managed

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The industrial analogy was also on the mind of Colorado's Governor Roy Romer when he proposed charter school legislation. "In the policy vernacular, the "front line" workers are given more responsibility for making decisions that affect the quality of the product. (The legislation passed.) Governor Roy Romer, Colorado, "Charter Schools: A Tool for Reinventing Public Education," *Changing Schools: The Journal of Alternative Education* 1, 9, Volume 21, No. 3 (Lakewood, CO), November 1993.

Some charter school advocates emphasize autonomy.

The essential idea is worth restating: it is to offer change oriented educators or others the opportunity to go to the local school board or to some other public body for a contract under which they would set up an autonomous (and therefore performance-based) public school which students could choose to attend without charge. The intent is not simply to produce a few new and hopefully better schools. It is to create dynamics that will cause the main-line system to change so as to improve education for all students.

Ted Kolderie, *Charter Schools: The States Begin To Withdraw The 'Exclusive'* 1, monograph, September 19, 1993, Center for Policy Studies, 59 West Fourth St., St. Paul, MN 55102.

Other advocates focus on accountability.

The regulatory focus is on the outcomes the school produces, and not on the manner in which they are achieved. Charter schools must clearly articulate their goals, objectives and student performance standards. The school is held accountable for these ends, but enjoys budget authority, significant autonomy and administrative flexibility in charting the course of how to get there.

Governor Roy Romer, Colorado, "Charter Schools: A Tool for Reinventing Public Education," *Changing Schools: The Journal of Alternative Education* 1, 9, Volume 21, No. 3 (Lakewood, CO), November 1993.

system of district schools and the new autonomous charter schools for tax revenues devoted to public education. Advocates argue that students who choose to attend charter schools should carry with them some portion of the per capita revenues that otherwise would go to the traditional school district. If charter schools prove to be successful educational institutions and viable economic entities, they will divert sufficient resources from the traditional system to either force a change in its structure, management, and operation or cause it to disappear from the scene.

In either case, it is expected that the public will benefit. If the traditional system can meet the competitive challenge (by adopting some of the charter school's innovations or capitalizing on its own comparative advantages), the continuing rivalry will promote effective and efficient public schools. If the traditional system cannot match the quality and cost structure of the charter schools, going out of business is arguably in the public interest.

The essential features of this new system of public schooling were first established in Minnesota. In 1991, that state adopted a statute allowing the formation of public schools that would be given autonomy from most forms of state and district control in return for accepting accountability to a local school board for the educational outcomes of their students. The precise nature of this basic bargain between the individual school and the district was to be negotiated between the charter school and the school board and embodied in a contract. Although not described as such, the arrangement was in effect chartered by the state, as the school board was required to receive approval for the contractual terms it would agree to from the state board of education.

Since passage of the Minnesota initiative, similar proposals have been introduced in at least 15 states. By the middle of 1994, charter school legislation was on the books in 11 states: Arizona, California, Colorado, Georgia, Kansas, Massachusetts, Minnesota, Missouri, Michigan, New Mexico, and Wisconsin.[3] The statutes are driven by a common logic and share common features derived from that logic. But fulfilling the promise of "autonomy for accountability" in the public schools is a matter of details, and the details of the statutes differ—in the extent to which they create a framework of administrative law that promotes the establishment of innovative schools, allow an individual school to exercise real independence from local and state control, and tie a school's survival to objective standards of student achievement.

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[3] 1994 Ariz. ALS 2 (Ariz. Rev. Stat. Ann. §§ 15-101, 15-181 - 189) (hereinafter referred to as AZ § 15-xxx). Cal. Educ. Code §§ 47601-47616 (Deering 1993) (hereinafter referred to as CA § xxxxx), Colo. Rev. Stat. §§ 22-30.5-101 - 114 (1993) (CO § 22-30.5-xxx), Ga. Code Ann. §§ 20-2-255 (1993) (GA § 20-2-255), 1994 Kan. SB 803 (KS § x), Mass. Ann. Laws ch. 71, § 89 (Law. Coop. 1993) (MA ch. 71, § 89), 1976 Mich. Pub. Acts 451 (amended by 1993 Mich. Pub. Acts 362, adding §§ 501-507) (MI § xxx), Minn. Stat. § 120.064 (1993) (MN § 120.064), 1993 Mo. S.B. 380, § 18 (MO § 18), 1993 Wis. Laws 16 (creating Wis. Stat. § 118.40) (WI § 118.40)

OVERVIEW

It is still too early to prove or disprove the fundamental proposition of the charter school concept—that a system of independent public schools, given freedom from central direction and control in matters of curriculum, instruction, budgeting, and personnel, and held accountable for student outcomes and operation consistent with the values of public education, will improve student performance. However, policymakers are not postponing action until they obtain solid evidence that charter school statutes work. The record of legislation passed demonstrates that states are not waiting to see how the charter school statutes work in other jurisdictions before passing statutes of their own.

It is not too early to examine how the states prepare to test the proposition of charter schooling by analyzing how they have crafted their legislation. The author has often heard his colleagues remark that the devil of education reform lies in the details. Each of the states that have passed charter school legislation has dealt with the details of the basic bargain of autonomy for accountability differently, but the statutes have not been studied intensively or extensively.[4]

This report examines the details of charter school legislation. It provides a comparative assessment of the 11 charter school statutes noted above, addressing four overarching questions:

- What is the basic intent of charter school statutes?
- What provisions have legislatures adopted to realize this intent?
- What kinds of tensions appear among the different provisions?
- How should a model statute attempt to resolve these tensions?

The report is divided into six sections and 13 appendices. The remainder of this section describes the expressions of legislative intent contained in the charter school statutes, as well as some basic information about the charter school programs. Of particular interest is the extent to which the legislatures emphasize the autonomy or the accountability of charter schools.

Next, the more salient features of charter school legislation are discussed. Sections 2 and 3 take a closer look at how each side of the "autonomy for accountability" bargain is embodied in charter school legislation. The statutes are examined in terms of the extent to which they support the objectives of individual school autonomy and accountability. Section 2 summarizes a detailed comparison of charter school legislation contained in Appendix A, in which the statutes are analyzed solely in terms of the extent to which they promote the autonomy of charter schools. Section 3 summarizes a separate analysis of the legislation from the standpoint of a charter school's accountability to government authority, contained in Appendix B.

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[4] Several studies cited in this report have made top level comparisons of key features of most charter school statutes. Others have examined the early experiences of states as they implement those statutes.

Section 4 examines the tensions between the goals of autonomy and accountability. The section also addresses conflicts between charter school autonomy and the values of public education embodied in state and federal constitutional law including: the responsibility of state government to provide educational opportunities for its children, the prohibition on religious education, and the concept of public schooling as an entitlement. It discusses ways these tensions and conflicts have been resolved in the statutes and how they might be better accommodated to fulfill the charter school concept.

Section 5 describes a draft model charter school statute, based on the analysis of existing legislation and motivated by the need to balance the autonomy and accountability objectives. The report also includes complete versions of the charter school statutes examined in the study, in Appendices C through M.

LEGISLATIVE INTENT

Many statutes contain no direct expression of the legislature's intent in passing charter school legislation, and those that express their intentions probably do not include all the reasons.[5] Nevertheless, a brief look at provisions concerned with legislative intent is useful. They do provide some guidance in interpreting the substantive portions of the statute. For example, should a charter school statute become the subject of litigation, the courts will look to provisions that purport to explain the legislature's thinking as guidance in interpreting the legislation's substantive provisions. Courts will try to avoid findings that conflict with clear statements of legislative intent. Likewise, a review of legislative intent provides some sense of the overall thrust of charter school statutes that sets the stage for the detailed discussion of substantive provisions in Sections 2 and 3.

The Basic Bargain: Autonomy for Accountability

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[5] The statutes of Michigan, Missouri, and Wisconsin are not discussed in any detail here because these state legislatures did not express the considerations and objectives behind their decisions to pass charter school statutes.

> In its "purest" form, a charter school is an autonomous entity that operates on the basis of a charter or contract between an individual or group (e.g., teachers, parents, others) which organizes a school and its sponsor (e.g., a local school board, county or state board). The charter specifies such items as the school's educational plan, specific educational outcomes and how they will be measured, the management plan for the school, and how the school will comply with other stated requirements.
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> Once granted a charter, the school begins to receive educational formula funding as if it were a public school district. The charter is in effect for a specified period of time, during which the school is accountable to the sponsor and the parents for the students attainment of specific educational outcomes. In exchange for accountability, the charter school may be freed from many (or all) district and state regulations that might inhibit innovation. When the initial contract is up, and if the school is meeting its student educational outcomes, has not violated any laws or grossly mismanaged its affairs or budget, the charter can be renewed. If a charter fails to attain outcomes as specified in its charter contract, it goes out of business.
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> Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative* 1, Morrison Institute for Public Policy, School of Public Affairs, Arizona State University, Tempe, AZ 85287-4405, October 1993.

The "purest" form of charter school is not the only form adopted in legislation, indeed it is debatable whether any legislature has actually assented to this ideal. Nevertheless, the description of charter schools provided by Bierlein and Mullholland provides a succinct statement of the vision of a charter school held by many advocates. More important for the purpose of this report is the fact that this ideal is a star guiding charter school advocates as they navigate the legislative process. Behind every charter school statute is a legislature's intent to offer potential school organizers the right to manage a public school with a relatively free hand in return for acceptance of the responsibility for student achievement. This is the "basic bargain" of charter school legislation—autonomy for accountability.

Autonomy. Charter school statutes are generally not clear in their expression of the autonomy side of the basic bargain. Most legislation does not discuss the goal as a matter of legislative intent. Those that do express the autonomy side of the basic bargain in relatively "strong" or "weak" forms. The strong form emphasizes school independence. The California legislation provides the only example of this approach. It states the legislature's intent "to establish and maintain schools that operate independently from the existing school district."[6] The weak form offers a more narrow measure of self-government. For instance, the New Mexico statute expresses the legislature's purpose "to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods and to enable individual schools to be responsible for site-based budgeting and expenditures,"[7] but the schools remain part of the local district and under the control of the local school board.

The Kansas statute provides a middle ground. It notes an "intention...to provide...opportunities to establish and maintain charter school programs that operate within a school structure, but independently from other school programs of the district."[8] Similarly, Georgia's statute explains that the state legislature intended to "provide a means whereby local schools may choose to substitute a binding performance based contract...for state and local rules, regulations, policies, and procedures."[9]

As will be seen below in Section 3, expressions of the weak form generally do correlate with statutory provisions that constrain school autonomy. New Mexico limits independence of charter schools in substantial ways. States on the middle ground also limit the autonomy of individual schools. However, strong expressions of the autonomy objective do not generally translate into provisions that assure the independence of individual charter schools. As will be seen below, most charter school statutes constrain autonomy in important ways.

Accountability. Most charter school statutes with sections on legislative intent are quite explicit in their expression of the legislature's demand for accountability for student performance. California's statute notes an objective to "hold the schools established...accountable for meeting measurable pupil outcomes."[10] Colorado "hold[s] charter schools accountable for meeting state and district content standards."[11] The Massachusetts statute "hold[s] teachers and school administrators accountable for students' educational outcomes."[12] One purpose of the Minnesota charter school statute is to "establish new forms of accountability for schools."[13]

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[6] CA § 47061.

[7] NM § 22-8-6.1.

[8] KS § 1.

[9] GA § 20-2-255 (a).

[10] CA § 47601 (f).

[11] CO § 22-30.5-102 (2) (h).

[12] MA ch 71, § 89.

[13] MN § 120.064, Subd. 1 (a) (5).

Georgia's charter school statute makes the same point in its description of the school charter as "a binding, performance-based contract." [14] The Kansas legislature evidences the same interest in its statement that the statute provides a "means...for ensuring accomplishment of the necessary outcomes of education."[15] To qualify for charter school status in Kansas, "[t]he school must be focused on outcomes or results," and unless specifically exempted by the local and state boards of education, must participate in the state's "quality performance accreditation process."[16]

Similarly, several charter school statutes explicitly focus on the legislation as a means of developing new criteria of student outcomes to enable schools to be held accountable for student performance. Colorado's statute notes that one objective of the legislation is "to allow the development of different and innovative forms of measuring pupil learning and performance." [17] The Massachusetts statute states the legislature's intent "to provide opportunities for innovative learning and assessments." [18] One purpose of the Minnesota legislation is to "require the measurement of learning outcomes and create different and innovative forms of measuring outcomes."[19]

Beneficiaries and Organizers

There is a general sense in most statutes that charter school legislation is intended to benefit students, teachers, parents, and the community at large (see Table 1.1), but it is often true that only a sub-set of these groups will be authorized to establish a charter school.

Students are generally seen as beneficiaries of the legislation, with the benefit expressed in terms of choice. Students have limited choices under the current system. In general, they are assigned a school to attend, although some may apply to special schools for science or the arts, and other special programs are geared to the disadvantaged. One objective of the charter school movement seems to be to expand the range of non-specialized choices available to average or "mainstream" students. The Arizona, California, Colorado, and Massachusetts statutes actually use the politically controversial word "choice." Arizona's statute notes the legislature's intent that charter schools "provide additional academic choices for parents and pupils." [20] The California and Colorado statutes identify a goal to

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[14] GA § 20-2-255 (a).

[15] KA § 1.

[16] KA § 4 (d) (1).

[17] CO § 22-30.5-102 (d).

[18] MA ch 71, § 89.

[19] MN 120.064, Subd. 1 (a) (4).

[20] AZ § 15-181 (A).

"provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system."[21] The Massachusetts statute is intended to "provide parents and students with greater opportunities in choosing schools within and outside their school districts."[22] The Minnesota legislation notes a more general purpose to "increase learning opportunities for pupils."[23] Similarly, Kansas seeks "increased learning opportunities for pupils."[24]

Table 1.1

Intended Beneficiaries of State Charter School Statutes

	AZ	KS	CA	CO	GA	MA	MI	MN	MO	NM	WI
Students	✓	✓	✓	✓		✓					
At Risk Students		✓	✓	✓							✓
Teachers		✓	✓	✓	✓	✓		✓	✓	✓	
School Board	✓	✓						✓	✓		✓
Local School		✓			✓					✓	
Community		✓		✓		✓	✓	✓			

Key: ✓ = group identified in statute, [blank space] = group not identified.

California and Colorado speak of the charter school program as being directed to "all pupils," but they also add an emphasis on expanding the opportunities available to "academically low achieving" students.[25] Wisconsin[26] and Kansas[27] also give preference to schools serving students at risk.

Teachers are clearly intended to benefit from the legislation. Most of the statutes include statements of the state legislature's intention that charter schools stimulate "different and innovative teaching methods".[28] Most charter school statutes also tend to focus on public school teachers as organizers of the new schools. California, Colorado, and Minnesota all note an objective "to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site."[29] Massachusetts notes an intent that the legislation "provide teachers with a vehicle for establishing [charter] schools.[30] The Kansas statute describes charter schools "as a means of providing new opportunities for...new professional vistas for teachers who operate such schools or who choose to work in them."[31]

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[21] CA § 47601 (e), CO § 22-30.5-102 (f).

[22] MA ch 71, § 89

[23] MN 120.064, Subd. 1 (a) (2)

[24] KA § 2(b).

[25] CA § 47061 (b), CO § 22-30.5-102 (b).

[26] WI § 118.40 (3) (d).

[27] KS § 10 (d).

[28] CA § 47061 (c), CO § 22-30.5-102 (c), MA ch 71, § 89, NM § 22-8-6.1, MN § 120.064, Subd. 1 (a) (3).

Most statutes require substantial agreement by teachers to give an existing school charter school status. Wisconsin requires that at least 50 percent of the teachers agree,[32] Georgia over 66 percent,[33] New Mexico at least 65 percent,[34] and Minnesota at least 90 percent.[35] Teachers must constitute a majority of the members of the management teams that run Missouri charter schools,[36] and of the board of directors that manage them in Minnesota.[37]

Provisions for the creation of new schools sometimes suggest that the legislature contemplate members of the larger **community** as a source of school organizers. Some statutes do take this expansive view. The Colorado statute is illustrative: "In authorizing charter schools, it is the intent of the general assembly to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of schooling all children within the public school system."[38] The Colorado statute, which does not explicitly contemplate or rule out conversion, provides for the more ambiguous standard that teacher support for formation of a charter school be "adequate."[39]

The Massachusetts statute also casts a wide net in search of charter school organizers. "Persons or entities" that may seek charter school status "shall include, but are not limited to, a business or corporate entity, two or more certified teachers, or ten or more parents.[40] The statute, which also does not explicitly address conversion, has no specific requirement that teachers support a charter school application.

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[29] CA § 47061 (d), CO § 22-30.5-102 (e), MN § 120.064, Subd. 1 (a) (6).

[30] MA ch 71, § 89.

[31] KA § 2 (d).

[32] WI § 118.40 (1m) (a). The same provisions requires 50 percent agreement by all teachers in the district to convert an entire district to charter schools.

[33] GA § 20-2-255 (c) (1).

[34] NM § 22-8A-5 (B) (1).

[35] MN § 120.064, Subd. 4a.

[36] MO § 18.2 (1).

[37] MN § 120.064, Subd. 4.

[38] CO § 22-30.5-102 (3).

[39] CO § 22-30.5-106 (1) (c).

[40] MA ch 71, § 89.

Kansas takes a similar approach. "A petition for the establishment of a charter school may be prepared and submitted to the board of education of a school district by or on behalf of a school building or school district employees group, an educational services contractor, or any other person or entity."[41]

Minnesota and Michigan have no teacher support requirements for new charter schools. But California and Wisconsin require support from 10 percent of the school district's teachers for any new school.[42]

The Wisconsin legislature sees the **school board** itself as both a potential beneficiary of charter school legislation and a potential agent of charter school formation. It requires the local board to seek the right to form a charter school and allows a school board to contract with an individual group to operate a charter school on its own initiative.[43] Kansas requires that a local school board approve a charter school petition before final approval by the state board of education.[44] Minnesota requires school districts to seek the right to form a charter school from the state.[45] The Missouri statute also focuses on local boards, requiring them to volunteer to join a pilot program involving only three schools.[46] Arizona permits local school boards "to contract with a public body, private person or private organization for the purpose of establishing a charter school."[47]

Expanding the range of choices for teachers and students, arguably, is not an emphasis of charter school statutes from Georgia and New Mexico. Georgia's, in particular, focuses more on self-determination by stakeholders in the **local school**. Its charter school legislation contemplates only the conversion of existing schools to charter status. The Georgia statute provides "a means whereby local schools" may seek charter status.[48] Here, the teachers and parents acting together are seen as the agents of change; they have the option charter school status, their students must live with the result of that choice. New Mexico's charter school legislation also refers to itself as a means whereby "individual schools" may seek charter status. Kansas also notes that "school building employee groups" can apply for charter school status, implying the possibility of converting an existing school.[49]

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[41] KA § 4 (b).

[42] CA § 47605 (a), WI § 118.40 (2) (b) (1).

[43] WI 118.40 (2m).

[44] KS § 4 (e), (f).

[45] MN § 120.064, Subd. 4 (b).

[46] MO § 18.1.

[47] AZ § 15-183 (B).

[48] GA § 20-2-255 (a).

CHARTER SCHOOL PROGRAMMATICS

Charter school legislation generally limits the number of charter schools that may be established in the state. Some statutes permit the establishment of charter schools for only a limited number of years. The legislation usually requires state education authorities to evaluate the success of charter schools and provide that evaluation to the legislature.

These features allow the legislature to control implementation of the charter school program.[50] The number of schools that may be established under the legislation and the duration of the charter school act reflect the legislature's intentions regarding the future of charter schools. The more schools allowed and the longer the program, the more permanent a fixture charter schools are likely to become in public education. Fewer schools and a shorter program suggest an experiment.

Most states limit the number of charter schools that may be established in the state or any school district (see Tables 1.2 and 1.3.). Arizona, Georgia, and Michigan do not. In Arizona, local school boards may authorize any number of charter schools.[51] The Arizona State Board of Education and the State Board for Charter Schools may each approve 25 schools per fiscal year.[52] Michigan does limit one category of potential charter school sponsors—community colleges—to one school each.[53] Georgia has absolutely no limit.

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[49] KS §§ 1, 4 (b)

[50] Charter school advocates frequently find they must advance their idea incrementally. Most states, says Minnesota's Senator Reichgott Junge, will pass legislation only if there is a cap on the number of charters granted. She advises that it may be necessary to win over opponents by suggesting, "Let's try to have eight schools, let's see how they work."

Blueprint For Change: Charter Schools: A Handbook for Action. Washington, D.C.: Democratic Leadership Council/Progressive Policy Institute (undated), at 16.

[51] AZ § 15-183 (C) (1).

[52] AZ § 15-183 (C) (2).

[53] MI § 502 (2) (c).

California's legislation permits the formation of up to 100 charter schools on a first-come, first-served basis, with no more than 10 in any district.[54] A district with 10 or fewer schools may convert the entire district to charter schools.[55]

Table 1.2

Number of Schools Permitted in the State

Innovation -- Experiment

No Limit	100	50	25	20	20	15	5	3
GA MI AZ	CA	CO	MA	MN	WI	KS	NM	MO

Table 1.3

Number of Schools Permitted in Any School District

Innovation -- Experiment

No Limit	Local Board May Reasonably Limit	No More Than 10	No More Than 5	No More Than 5 in Major Cities, No More Than 2 Elsewhere	No More Than 2
GA MI NM MO AZ	CO	CA	MN	MA	WI KS

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[54] CA § 47602 (a).

[55] CA § 47602 (a).

Colorado allows up to 50 schools, but 13 have been reserved for at-risk students.[56] The statute has no specific limitation on the number of schools that may be established in a district, but the local board "may reasonably limit the number."[57] In addition, it allows persons to appeal the grant of a charter to the state board of education on the grounds that the grant is "inconsistent with the equitable distribution of charter schools among school districts."[58]

The Massachusetts statute allows as many as 25 schools, but Boston and Springfield are each limited to five, and no more than two may be established in any other city or town.[59] Moreover, no more than three-quarters of one percent of the total number of students attending public schools may be enrolled in charter schools.[60] Minnesota's legislation allows up to 20 schools, and no more than five may be authorized by any school board.[61]

Wisconsin authorizes up to 20 schools, with no more than two in any school district.[62] The state superintendent of schools is required to authorize the first 10 requests by school boards to establish charter schools.[63] Kansas limits the state to 15 charter schools, with no more than two in any district.[64] The New Mexico legislation authorizes five charter schools and contains no limits on where the schools can be established.[65] Missouri's "pilot project" statute requires that three schools become involved in the program.[66] The program should involve one school performing above average under a statewide assessment system, one at average, and one below average, but in no case can more than two be from any one category.[67] There is no requirement that the schools be distributed among several districts.

In terms of the duration of the charter school program, virtually all states are innovators. Only the Colorado and Missouri statutes contain "sunset" provisions limiting the duration of the charter school program. Colorado's expires in 1998,[68] Missouri's "pilot project" in 2000.[69]

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[56] CO § 22-30.5-109(2).

[57] CO § 22-30.5-109(1).

[58] CO § 22-30.5-108 (4) (a) (I) (E).

[59] MA ch 71, § 89.

[60] MA ch. 71, § 89. This amounts to roughly 6,500 of the state's approximately 860,000 students. *Charter Schools: Questions & Answers*, Executive Office of Education, Commonwealth of Massachusetts (undated mimeograph), at 4.

[61] MN § 120.064, Subd. 3 (b).

[62] MN § 120.064, Subd. 3 (b).

[63] WI § 118.40 (1).

[64] KA § 3.

[65] NM § 22-8A-4 (c).

[66] MO § 18.1.

[67] MO § 18.2 (3).

[68] CO§22-30.5-114.

[69] MO § 18.1.

The Arizona statute terminates the State Board for Charter Schools in July of 2004 and repeals provisions related to the Board's operation in January of the following year.[70] The statute makes no provision for the oversight of charter schools that the Board may have authorized between 1994 and 2004 (see Table 1.4).

Table 1.4

Length of Charter School Program

Innovation--Experiment											
	CA	GA	KS	MA	MI	MN	NM	WI	AZ	MO	CO
Legislation Passed	1992	1993	1994	1993	1993	1991	1993	1993	1994	1993	1993
Program Start (First School)	1993			1995	1994	1992				1995	1994
Program Termination	None	None	None	None	None	None	None	None	None But...	2000	1998

SUMMARY

Where they provide an indication of legislative intent, charter school statutes share several common features, but differ in important ways. All are based on a willingness to permit the formation of individual schools free from the control of state and school district regulation, in return for an acceptance of responsibility for student performance. Few statutes present a clear vision of autonomy. More are forthright in their assertion of the goal to hold charter schools accountable for educational outcomes.

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[70] AZ§41-3004.15.

There is a general intention that the formation of charter schools will improve the educational opportunities of all students, and sometimes a specific emphasis on disadvantaged students. However, the statutes often differ in their descriptions of other important beneficiaries of the legislation and those who will be allowed to make use of the charter school option. Many focus on teachers, but others specifically include parents, members of the larger community, existing individual schools, and even school boards.

The statutes suggest the charter school concept is still more of an experiment than a permanent innovation aimed at changing the public school market, but some suggest innovation more than others. Limitations on the number of charter schools that may be formed in the state or in any one district are the rule. But several statutes allow a substantial number of schools to be formed and few contain any sunset provision on the charter school program.

II. AUTONOMY

INTRODUCTION

As embodied in the charter school statutes, the extent to which the charter school is independent of state education agencies and of the school district is a function of three factors:

1. **The nature and scope of an individual charter school's operation**. This concerns the decisions that are the sole responsibility of the school; such as in the areas of curriculum, instruction, budgeting, and personnel. It is also a function of the constraints placed on school authorities in such areas as admissions and student discipline. The focus here is the extent to which an individual school is a legally independent entity, free from outside control of its ongoing operations.

2. **The process of becoming a charter school**. The concern here is the existence of "thresholds" that might tend to discourage otherwise qualified groups from forming a charter school, unduly narrowing the scope of acceptable forms of innovation, and thus limiting the range of alternative educational programs available to the public. Such thresholds can limit autonomy by stifling creativity, resulting in "independent" schools that essentially conform to the same vision of public schooling as traditional schools. Of central importance is the extent to which the approval of charter school applications is consistent with standards of due process and governed by objective criteria.

3. **The possibility of charter revocation and renewal**. This topic examines the security of the charter school and especially the expectations school organizers can reasonably have about the circumstances under which they will keep or lose their charter. Here again due process and objective criteria are key.

This chapter provides a detailed examination of how charter school statutes consider these factors of autonomy. Each factor is further divided into specific topics. The relevance to autonomy of each factor and topic is discussed in general terms. The statutes' treatment of the sub-topic is then displayed in tabular form. For purposes of illustration, selected statutory provisions are discussed in the text. A detailed analysis of each statute's treatment of every topic, with appropriate references to the specific provisions, can be found in

Appendix A. The chapter ends with a summary of the topics and the states with legislation most supportive of the autonomy goal.

THE NATURE AND SCOPE OF AN INDIVIDUAL CHARTER SCHOOL'S OPERATION

What is a charter school? How does its position in the state system of public education differ from that of the traditional school? The focus here is the extent to which charter school legislation enables the creation of an individual school that is free from outside direction on policy decisions critical to its success and has control over its own day-to-day affairs—what might be called operational autonomy. An examination of this topic includes: a charter school's legal status, powers, and authorities; the extent to which such schools are exempted from state statutes and from regulation by state and district education authorities; the restrictions placed by the legislature on the operation of all charter schools; the authorized forms of school self-government; the school's responsibility for students and teachers displaced by formation of the school; the school's responsibility for student transportation; and the nature of school financing, specifically, how the school will be funded compared to a typical public school in the state.

Legal Status, Powers, and Authorities

In the traditional school system, the lowest level unit of public education with legal recognition is the local school district. The district school board has sole legal authority for the management and organization of public schools within the district. Individual schools have no independent legal status. This is why, absent contrary legal authority, individual schools are required to respond to district level directives on matters of educational policy, defer to budgeting and personnel decisions made by the district, and accept the results of negotiations between the district and the district teachers union if the district is subject to collective bargaining. Absent legislation to the contrary, whatever de facto autonomy the school district chooses to give an individual school (e.g., through such mechanisms as "site-based management" programs) must be within the confines of state law restricting subdelegations of authority delegated by the legislature to the school district. Absent legislation giving decisionmaking authority to individual schools, these delegations of authority can be withdrawn whenever the district chooses. The individual school is simply an administrative unit created by the district.

In keeping with the general goal of moving authority and responsibility for public education from state and district officials to the school site, one of the most important objectives of the charter school movement is to give the individual schools a distinct legal status, separate from the school district. This status is expressed in terms of: the school's relationship with other government bodies (particularly to the government agency that approves charter school applications and the school district in which the charter school is located); its treatment for the purposes of receiving public and other funds; its liability to members of the public for tort claims; its authority to contract; and its position in public sector labor relations, particularly in collective bargaining. Legal status is also reflected in the powers and authorities explicitly granted by the legislature to charter schools.

Table 2.1
Powers Granted to Individual Charter Schools

	More Autonomy --- Less Autonomy									
POWER	MA	MN	MI	CO	AZ	CA	KS	MO	NM	GA	WI
Body Politic	✓		✓	No					No	No	No
Incorporation	✓	✓	✓			Neg			No	No	No
Sue/Be Sued	✓	✓	✓	Neg	✓						
Acquire Interests in Real Property	✓	✓	✓	✓	✓						
Determine Budget	✓	✓	✓	✓				✓	Neg		
Determine Curriculum	✓	✓	Neg	Neg				✓	✓	✓	Neg
Receive/Disburse Funds	✓	✓	✓	Neg					No		
Contract	✓	✓		✓	✓						
Hire/Fire Personnel	✓	✓	No	✓			No	✓			No
Liability for Torts	✓	✓		Neg							Neg
Independent of Local Board	✓			Neg					No		No
Public Employer in Collective Bargaining	✓	✓	No	✓			No				No
Accept Gifts	✓	✓	✓	✓		✓					

Key: ✓ = power granted; No = power not granted; Neg = power negotiable; [blank space] = power not addressed in statute.

Full legal independence means that the charter school will deal with the school district where it is located as an equal and/or be treated by the state as a school district. While every charter school statute changes the relationship between an individual school and the school district, few go so far as to make the school a completely independent legal entity (see Table 2.1).

Charter schools organized under the Massachusetts statute have the greatest operational autonomy. First, the schools are independent of the local school board. They are completely distinct legal entities. Because charter schools can be organized under the state's non-profit corporations statute and have powers of business corporations not inconsistent with the charter school statute, organizers forming a charter school have a substantial body of Massachusetts law to guide them on the important issues of authority and governance. In addition, the state charter school statute explicitly grants individual schools the right to acquire property, determine budgets and curriculum, receive and disburse funds, enter into contracts, hire and fire employees, borrow funds, and act as the public employer in collective bargaining under state law governing labor relations in the public sector. A Massachusetts charter school may also limit enrollment to "specific...areas of focus of the school, such as mathematics, science or the arts," and "establish reasonable academic standards as a condition for eligibility" for admission. In short, a Massachusetts charter school is largely independent of outside control over its strategic direction and day-to-day operations.

By way of contrast, the autonomy of charter schools in New Mexico is considerably more limited. According to New Mexico's legislation, "'charter school' means an individual school within a school district, authorized by the state board to develop and implement an alternative educational curriculum and authorized by law to develop and utilize a school-based budget." However, the budget must be "submitted to the local school board for approval or amendment," and is then submitted to the state department of education by the board. The school board also controls the charter school's accounts. The statute contains no discussion of the charter school's status in labor relations or tort liability.

Under California's legislation, a charter school's autonomy falls somewhere in between Massachusetts and New Mexico statutes. The California statute is vague but appears to offer the individual charter school the possibility of substantial autonomy. For funding and other purposes, a charter school is deemed a school district. California charter schools may accept gifts from private persons or organizations to establish or operate the school. Most other dimensions of autonomy appear to be subject to negotiation. For example, while the statute does not specify a charter school's legal status, schools have been established as "unincorporated entities within their...district...non-profit corporations that are largely or entirely independent of the...district, and...as a Joint Powers Authority pursuant to California Government Code provisions."

Exemptions

Legal status is perhaps the most important aspect of operational autonomy, but it is not the sole basis. Autonomy is also determined by the scope of exemptions or "waivers" from existing laws, statutes, rules, and regulations normally governing all public schools which are either automatically granted by the charter school statute, or obtained through negotiation with the government authorities that approve charter schools. Autonomy can also be expressed in terms of the restrictions (again, including laws, statutes, rules, and regulations) to which every charter school must adhere under the statute. This subsection covers exemptions and waivers, the next deals with restrictions.

Waivers are of central importance to the charter school movement, which argues that existing rules and regulations imposed on individual schools by the state and school district are a principal obstacle to education reform. The way charter school statutes deal with waivers can have a substantial impact on school autonomy. The greatest degree of autonomy is granted in legislation which explicitly provides all charter schools with a "blanket exemption" from the restrictions under which traditional schools operate. Under this formulation it is intended that charter schools truly start with a clean slate; applicants should be able to focus on justifying their educational program on its own terms and avoid detailed negotiations with approving authorities over myriad school rules and regulations.

By contrast, provisions that merely allow a charter school applicant to seek waivers from specific rules, regulations, and statutes will tend to reduce operational autonomy. Such provisions place a considerable burden on the applicant to identify the regulations that would otherwise obstruct the proposed school design and then to justify the exemption. This is bound to reduce the pool of charter school applicants. Some will be unable to finance the necessary research; others will be discouraged by the time and costs of negotiation. In addition, the give and take of negotiation practically assures that a charter school's operational autonomy will be less than it would be under a blanket waiver. The approach also assures that charter schools will continue to operate under the requirement to comply with rules and regulations that by definition have nothing to do with the success or failure of their educational programs. Moreover, the school will forever operate under the risk that its organizers missed some existing rule or statute in their initial negotiations and that the school will become subject to subsequent state or district regulation.

In the area of exemptions from state and local regulations, no state is a clear winner. Several statutes contain provisions that appear to grant blanket exemptions, but the legislation actually limits the scope of waivers through other provisions that have the effect of requiring school organizers to negotiate waivers with the approving authority (see Table 2.2).

Table 2.2

Scope of Exemptions Granted to Individual Charter Schools

<table>
<tr><th colspan="3">More Autonomy -- Less Autonomy</th></tr>
<tr><th>Blanket Exemption Provided</th><th>Each Exemption Negotiated</th><th>Exemption Limited by Statute</th></tr>
<tr><td>AZ--->
CA--->
WI--->
MN---></td><td><---MA
<---GA
CO
MO
KS</td><td><---MI
NM</td></tr>
</table>

The Minnesota statute provides an example of this approach. The statute reads as if the legislature has adopted a broad approach to exemptions, but then seems to leave some scope for bargaining between those organizing the school and the approving authorities. "Except as otherwise provided in this section, an outcome-based school is exempt from all statutes and rules applicable to a school board or school district, although it may elect to comply with one or more provisions of statutes or rules." Given that local and state boards are under no obligation to approve any charter school application, organizers may find it beneficial to "elect" to comply with certain requirements either board considers beneficial. Approving authorities in California and Wisconsin have similar power, which translates into bargaining power over charter terms and hence some de facto control over waivers. The scope of exemptions is probably a matter of negotiation in those states as well. Nevertheless, the legislation in these three states seems to be based on an assumption favoring exemptions.

Georgia's legislation appears to assume that each exemption will be negotiated. The statute requires that each school charter contain "[a] provision to exempt the school from state rules, regulations, policies, and procedures and from other provisions of this title, unless otherwise specified." This wording could plausibly support a blanket exemption. However, the school charter is defined in part as a contract that "will exempt a school from state and local rules, regulations, policies, procedures, and from the provisions of this title (i.e., the title of the state code dealing with education) according to the terms of the contract."[71] The statute appears to require local as well as state board approval of the charter,[72] which seems to imply that exemptions must be negotiated between the school and the state and local school boards, rather than assumed.

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[71] GA § 22-2-255 (b) (1).

At the other end of the spectrum, New Mexico offers only a narrow range of negotiable exemptions. The general rule, with limited exceptions, is that "a charter school shall comply with all provisions of the Public School Code...provided that the charter school may request and the state board may grant a waiver of certain provisions...for the purpose of operating the charter school.[73]" In addition, the scope of permissible exemptions is narrow. "The state board may grant waivers...for the purpose of providing class size and structure flexibility, alternative curriculum opportunities and alternative budget opportunities."[74]

Restrictions

The autonomy of an individual charter school depends not only on its legal status and the extent of its exemptions from statutes, rules, and regulations governing other schools, but also on the nature of the restrictions under which all charter schools must operate. As used in this report, "restrictions" are limitations contained in the charter school statute itself that apply to any charter school. These "built-in" restrictions cannot be waived by the government authorities authorized to approve charter school applications. Along with basic requirements imposed by the federal and state constitutions, and state laws governing health, safety, discrimination, and the handling of public funds, restrictions contained in the charter school statute establish the outer bounds of independence from state control.

The charter school statutes contain a relatively uniform set of restrictions, particularly in the areas of tuition, relationships with private or religious schools, and discrimination in admissions. Restrictions regarding the nature of employer-employee relations in charter schools are less uniform.

Tuition. In keeping with the intent that charter schools be part of the public school system, the legislation generally prohibits such schools from charging tuition.[75]

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[72] GA § 22-2-255 (c) (1), (g).

[73] NM § 22-8A-6.

[74] NM § 22-8A-6.

[75] CA § 47605 (d); CO § 22-30.5-104 (5); KS § 4(d) (3); MA ch. 71, § 89; MN § 120.064, Subd. 8 (e); WI § 118.40 (4) (b) (1); MI § 504 (2). This prohibition is implicit in Georgia's and New Mexico's statutes, which only permit the conversion of existing public schools to charter schools. It is also implicit in the Missouri pilot program legislation, which calls for school districts to volunteer sites.

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Private, Religious, and For-Profit Schools. Charter school legislation generally prohibits private and religious schools from making use of the statute. A minority of statutes directly or indirectly allow for-profit charter schools. Prohibitions against private religious and for-profit charter schools are implicit in the Georgia and New Mexico statutes, which only permit conversion of existing public schools to charter schools (see Table 2.3 and Appendix A).

Table 2.3

Statutory Restrictions on Charter Schools: Affiliation with Religious, Private, or Profit-Making Schools

	More Autonomy										Less Autonomy
	MN	KS	AZ	MI	MA	WI	CA	CO	GA	MO	NM
Private School Affiliation Allowed	✓	Not Ruled Out	Not Ruled Out	Not Ruled Out	No	No	No	No	No	No	No
Religious Affiliation Allowed	No	No	No	To Extent of the Law	Not Direct ?	No	No	No	No	No	No
For-Profit Affiliation Allowed	✓	✓	Not Ruled Out	No	✓	Not Ruled Out			No	No	No

Key: ✓ = affiliation allowed; affiliation not allowed; ? = statute unclear; [blank space] = not addressed in statute.

By allowing charter schools to organize as cooperatives, Minnesota permits charter schools to be run on a "for-profit" basis (i.e., to distribute profits to members of the cooperative)[76]. Massachusetts allows "a business or corporate entity" to submit an application to establish a charter school.[77] The state also indirectly permits for-profit operations by allowing a charter school's board of directors to contract substantially all of their operations to for-profit entities.[78] Minnesota also allows private schools to convert to charter school status, something no other state explicitly permits.[79]

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[76] MN § 120.064, Subd. 4 (a).

[77] MA ch. 71, § 89.

Discrimination in Admissions. From a constitutional perspective, private institutions are generally free to discriminate in admissions on any basis they choose. In all but a few instances, private discrimination is regulated by statute, not the constitution. As institutions of state government, charter schools are subject to equal protection requirements established under the Fourteenth Amendment of the United States Constitution.[80] Thus, public school admissions policies based on race have been struck down by the courts as unconstitutional,[81] while the constitutionality of admissions to special public schools for the performing arts, science, or advanced academic studies based on a student's ability in those areas is an accepted practice.[82]

Charter school legislation generally contains statutory prohibitions against various forms of discrimination in the area of school admissions. Potential grounds for discrimination prohibited by statute vary widely and cover a broad range of topics. Prohibitions on discrimination based on a person's status (e.g., unwed mothers, homosexuals, race, religion) are quite common. Prohibitions on admissions criteria related to a student's aptitude or ability are often found in the statutes. In addition, to ensure against discrimination in the case of over-enrollment at a charter school, most states require that such problems be handled by lottery.

Whatever their basis—in the federal or state constitutions, or in statutes—prohibitions on discrimination in admissions have the same effect as the restrictions on tuition, private school conversion, religious affiliation, and for-profit status discussed above. These prohibitions cannot be waived by state or local boards, and so establish the outer bounds of autonomy for any and all charter schools in the state (see Table 2.4).

With regard to freedom from restrictions on a charter school's admissions policies, Massachusetts and Kansas are close competitors. Although Massachusetts charter schools are prohibited from discriminating on the basis of academic achievement, they are explicitly

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[78] WI § 118.40 (3) (c).

[79] MN § 120.064, Subd. 8 (c). The second charter school authorized was a Montessori school, teaching grades K-6, which converted from private status in March 1993. Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative* 2, Morrison Institute for Public Policy, School of Public Affairs, Tempe, Ariz.: Arizona State University, October 1993.

[80] "No State shal ... nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. See generally, John E. Nowak and Ronald D. Rotunda, *Constitutional Law* (4th ed., West, 1991) § 14.1.

[81] Brown v. Bd. Of Ed. 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873 (1954).

[82] Hudgins and Vacca, *Law and Education*, 3d ed. (Michie, 1991) § 9.4. ("The discretionary authority of local boards of education has been upheld, relative to the assignment of pupils to special schools and to particular classrooms within those schools.")

Table 2.4
Statutory Restrictions on Charter Schools: Affiliation with Religious, Private or Profit-Making Schools

More Autonomy -----										----- Less Autonomy
No Discrimination on the Basis of ...	KS	MA	CA	MN	MI	AZ	GA	MO	NM	WI	CO
Ethnicity/Ancestry/ National Origin		✓	✓			✓				✓	✓
Gender/Sex		✓	✓			✓				✓	
Handicap/Disability/ Intellectual Ability/ Special Education Need		✓	✓	✓	✓	✓				✓	✓
Residence		OK	OK		OK	OK	OK?	OK?	OK?		OK
Creed/Religion		✓								✓	✓
Color/Race		✓								✓	✓
Pregnancy										✓	
Marital Status										✓	
Sexual Orientation		✓								✓	
Measures of Achievement		✓		✓	✓						
Academic Standards		OK					OK?	OK?	OK?		
Athletic Ability				✓	✓	✓	OK?	OK?	OK?		
Sibling in School					OK						
English Proficiency		✓				✓					
Focus Area of School		OK									
Graduation Incentives Program				OK							
Admission Open to Any Student in the District?						Yes, But...					Yes
Expectation of Racially/Ethnically Balanced School?	Yes		Yes	Yes					Yes	Yes	Yes
Expectation of Socio-Economically Balanced School?	Yes										

Key: ✓ = prohibition in statute; OK = Discrimination permitted; [blank space] = not addressed in statute; But = See Text or Appendix; ? = statute unclear.

authorized to incorporate reasonable academic standards and affinity with the school's programmatic focus (i.e., arts, science, math) into decisions on the admission of individual students. The Kansas statute does not prohibit particular forms of discrimination outright, instead it requires that charter school applicants explain their admissions policies and the student body reflect the locality's racial and socio-economic character. Admissions criteria like those authorized by the Massachusetts statute are not ruled out. (But approving authorities in Massachusetts and Kansas are not obliged to authorize charters with such admissions policies.) Every other statute requires essentially open admissions, with some allowance for discrimination in favor of local students when a school converts to charter status.

Employer-Employee Relations. Restrictions on the nature of labor relations between the charter school and its employees established by the state can have a profound effect on the school's autonomy. State law governing public employment, civil service, and the administration of state and local education agencies may conflict with a charter school's need for flexible personnel practices. Of particular importance are a charter school's right to employ teachers directly and its role in public sector collective bargaining. The independence of a charter school is undermined by statutory provisions that forbid it from hiring personnel without a teaching license or certificate; restrict the school's right to hire, promote, assign, and discharge teaching personnel; and allow school districts to assign teaching personnel to the charter school. Such provisions may deny charter school organizers the ability to staff the school with the kind of people they consider qualified to implement their educational program.

Statutes that do not require charter school operators and public employees at the charter school to enter into direct negotiations on wages, hours, and working conditions under the state's collective bargaining statute also undermine autonomy. Without such provisions, charter schools might be subject to the results of collective bargaining between a district teachers union and the local school district. Of particular concern is charter school legislation that requires or allows teachers to remain in the collective bargaining unit of the school district where the charter school is located are particularly undesirable. These statutes assure that decisions vital to the success of the charter school will become part of the larger mix of issues covering the district as a whole and subject to the inevitable give and take of negotiations between district authorities and the district union.

Legislation that denies or restricts the access of charter school teachers to the state public teachers' retirement system, or restricts teachers' rights if they choose to move to a charter school, or if they choose to return to the traditional school system, also undermines the independence of charter schools. Such policies create barriers to participating in the charter school program that will tend to reduce the pool of teachers likely to make themselves available for employment in charter schools, deny the new school's access to the best teachers, and jeopardize the ultimate success of the charter school program.

State statutes do not deal with labor relations in charter schools in any consistent fashion (see Table 2.5.).

Table 2.5

Statutory Restrictions on Charter Schools: Employer-Employee Relations

	More Autonomy--Less Autonomy										
	MA	MN	MO	CO	AZ	CA	MI	NM	GA	KS	WI
The Charter School... Hires Teachers Without a Certificate	✓	No	No	Neg	Neg	Neg	No Unless	Neg	Neg	Neg	No
Bargains Directly With Teachers at the School	✓	✓	✓	Neg	Neg	Neg	No Unless	No	No	No	No
Is not Subject to District Collective Bargaining Agreement	✓	✓	✓	Maybe	Neg	Unclear	No Unless	Maybe	Maybe	No	No?
Has Power to Hire and Fire School Personnel	✓	✓	✓	✓	Neg	Neg?	No	No	No	No	No
Charter School Teachers... Remain in State Retirement System	✓	✓ But...	✓	✓	✓	✓	Maybe	✓	✓	✓	✓
May Return to the School District	✓	✓	✓	✓	✓	✓	Maybe	✓	✓	Neg	✓

Key: ✓ = required in statute; No = prohibited in statute; Neg = negotiable; ? = unclear; Maybe = possible; But/Unless = see text for caveat.

Missouri charter schools have the greatest degree of independence, because that state does not permit collective bargaining in public education. Therefore, the school's management team has substantial power over its employees.

Among the states that permit or require collective bargaining in public education, Massachusetts charter schools have the most autonomy in matters of labor relations. Massachusetts does not require that teachers hired for charter schools hold teaching certificates issued by the state. Along with Minnesota, Massachusetts allows those running the charter school to bargain directly with the teachers at the school, separate from any collective bargaining agreement between the local school district and a district's local teachers union. Both states permit a charter school to hire and fire its teachers directly. Both also give teachers who leave positions in a school district to teach in a charter school the opportunity to return to a position in the district. This gives charter schools access to a substantial pool of qualified teachers. Massachusetts and Minnesota also allow district teachers joining charter schools to remain in the state teachers retirement system. However, Massachusetts law does not permit uncertified teachers to join the teachers retirement system and Minnesota requires teachers to pay the district's contribution, which may tend to discourage some teachers from transferring to its charter schools.

Wisconsin's legislation tends to limit the autonomy of charter schools. The statute does not discuss whether teachers must be licensed. However, a charter school has the status of an "instrumentality of the school district" and the district is considered to be the employer of all personnel for the charter school.[83] This implies that the charter school's teachers must be licensed, the school district assigns personnel to the charter school, the charter school's teachers are part of the district for collective bargaining purposes, and they remain under the state public teachers' retirement system.[84] It further implies that charter school contract provisions regarding restrictions on public school teacher's rights if they move to a charter school or choose to return to school district employment, which are relevant to other states' charter school statutes, have no bearing in Wisconsin.

Authorized Forms of Self-Government

Self-government is fundamental to charter school autonomy. Charter school advocates want those with a stake in the school—those employed at the school, particularly the teachers, parents, and members of the community that depends on the school to supply competent citizens and workers—to be responsible for the school's management. Autonomy is promoted when provisions related to self-government permit those interested in forming a charter school, and otherwise qualified to manage such a school, a free hand in determining how they will run the school. Autonomy is also furthered when the approving authority is not permitted to interfere with agreements among potential organizers over self-government, by negotiating with applicants over the form of self-government charter schools may adopt.

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[83] WI 118.40(7).

[84] Bierlein and Mullholland state that Wisconsin charter schools must hire licensed teachers and that teachers remain district employees for the purposes of retirement, collective bargaining, and job security. Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative*, Appendix A: Comparison of Charter School Laws, Morrison Institute for Public Policy, School of Public Affairs, Tempe, Ariz.: Arizona State University, October1993.

Autonomy is compromised when statutes limit self-government in ways that restrict community participation in decisionmaking that might be essential to the success of new school designs. Negotiations with an approving authority over who will have the right to manage the implementation of an otherwise qualified charter school plan is completely at odds with the idea of autonomy. Statutes that restrict control over charter schools to one group (e.g., certified teachers) are also contrary to the autonomy objective. Both deprive the charter school program of potential leaders with valuable perspectives and experience. Negotiations between charter school applicants and approving authorities over governance also compromise autonomy because they enable the approving authority to hold charter approval hostage to agreements by charter school applicants that reduce its operational independence.

The charter school statutes are generally quite weak in this most basic aspect of school autonomy (see Table 2.6).

Table 2.6

Authorized Forms of Charter School Self-Government

More Autonomy										Less Autonomy
MA	MN	AZ	CA	CO	KS	WI	MI	MO	GA	NM
Board of Trustees Power of Business Corp. Organized as a Non-profit	Board of Directors with Teacher Majority Organized as Non-profit or Coop	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	Board of Directors as set by Appr. Authority	Five Person Mngmt Team with at least Three Certified Teachers and one Principal	Local School Board 66+% Vote of Teachers Voids Charter	Local School Board

In practice, the Massachusetts statute is likely to offer charter schools the greatest degree of autonomy in self-governance. While the statute dictates charter school self-government by a board of directors, on the advice of the secretary's general counsel, schools are likely to form under the non-profit corporations statute, Section 180 of the Massachusetts General Laws, which can accommodate a wide range of preferences in terms of interest group representation and the protection of minority stakeholders rights. The statutes of Arizona, California, Colorado, Kansas, and Wisconsin do not specify any approach to the self-governance of charter schools, so on first impression those statutes appear to offer the greatest degree of freedom in terms of choice. But this apparent autonomy is tempered to the extent that governance structures become a matter of negotiation between a charter school applicant and the approving authority.

Responsibility for Displaced Students and Teachers

Some provisions of charter school legislation affect both the approval process and subsequent school operations. If negotiable with approving authorities, the responsibility for displaced students and teachers, the arrangement for student transport, and the level of school financing can raise barriers that inhibit the formation of some charter schools. Autonomy is affected because some potential organizers may be precluded from joining the pool of plausible charter school applicants. An approving authority may be able to use negotiations over these provisions to keep certain school designs out of the district and to indirectly control other aspects of those designs that are allowed. For example, a local board might insist on a level of funding for charter schools that would make a particular school design unfeasible or use its power over the purse to modify an innovative program that strayed from the board's traditional views of curriculum and pedagogy.

The operational aspect of autonomy implicated by such provisions is the school's ability to operate independently once formed. Requirements to find displaced teachers and students satisfactory schools may place onerous and perhaps expensive burdens on the charter school; low levels of financing may make it difficult for the school to carry out its educational program.

Making the charter school responsible for students and teachers displaced by formation of a school, because they choose not to attend or work there after conversion, would seem to undermine the school's autonomy by raising another barrier to entry into the market for public schools. Making schools responsible for arrangements for those who do not wish to participate may make it more difficult to start a charter school. Charter school legislation can have just that result by requiring that charters or contracts include provisions regarding the treatment of displaced students and/or teachers and making the subject a matter of negotiation between the school organizers and the approving authorities. Fortunately, from the standpoint of autonomy, most statutes do not place the burden of displaced students and teachers on the charter school (see Table 2.7).

Because the Massachusetts charter school statute essentially contemplates that charter schools will be new schools rather than the conversion of public schools operating under local school districts, it does not address the problem of teachers or students displaced by formation of a charter school. In any event, the legislation does not make the charter school responsible for displaced persons. Of those statutes that do contemplate conversions, Wisconsin charter schools are not responsible for displaced teachers. With regard to displaced students, Wisconsin goes one step further by placing the burden squarely on the district.

Table 2.7

Responsibility for Displaced Students and Teachers

More Autonomy -- Less Autonomy

	District Responsible	No Requirement That Charter School be Responsible	Describe Alternatives in Charter Proposal	Student/ Teachers Remain at Converted Charter School
Displaced Students	WI	KS MA MI MN AZ	CA CO	GA NM MO
Displaced Teachers		KS MA MI MN WI CA AZ	CO	GA NM MO

Responsibility for Student Transportation

Making the charter school responsible for student transportation would also appear to be a barrier to entry into the market for public schools. There is no obvious reason why this should be the responsibility of the charter school, given that local school districts often maintain extensive systems of student transportation. The statutes are generally split between those that place responsibility with the state or district, and those that either specify the matter is negotiable or make no mention of it at all (see Table 2.8). Arizona apparently makes the charter school responsible, but provides a separate funding mechanism for transportation and does not preclude the school from contracting with a district for transportation services.

Table 2.8

Responsibility for Student Transportation

More Autonomy			Less Autonomy
State or District Responsible	Negotiable	Not Discussed in Statute	Charter School Responsible
MA GA NM MO WI KS*	CO MN CA KS	MI	AZ

Note: * free lunch students only.

Charter School Financing

Charter school advocates imply that, if given the same level of resources available to traditional schools under district control, they can do a better job of educating students. Thus, maintaining a charter school's financing at a level equal to that of traditional public schools, and giving the individual charter school discretion over the use of its budget, would seem to be essential to success of the charter school program.

Without control over the use of funds (discussed above in the subsection on status, power, and authorities), it may be impossible to implement new educational strategies. Without adequate funding for start-up and continuing operations, a charter school's statutory control over its finances may have little effect. (The re-authorization of the Elementary and Secondary Education Act passed by Congress and signed into law by President Clinton in October of 1994 creates a program of three year grants to support schools that have received charters.) Related to these financial aspects of autonomy is whether state funds go directly to the school or through the district first, the latter alternative giving the district relatively greater bargaining power in negotiations over charter school funding and relatively more control over the school's exercise of discretion.

Thus far, Arizona is the only state that has passed legislation providing charter schools with special funding to cover start up costs, including the renovation and remodeling of existing structures.[85] These funds are administered by the State Department of Education under rules adopted by the State Board of Education.[86] Once a charter has been granted, "qualifying applicants" shall be awarded an initial grant of up to $100,000 and may be eligible for a second grant up to the same amount.[87]

In general, the statutes strive to place charter schools and traditional schools on a level playing field with respect to general financing, as measured on a per pupil basis (see Table 2.9).

Financial arrangements mandated by the Massachusetts statute offer charter schools the most autonomy. The school receives its funding from the school district where the student resides, but the school does not bargain with any district for its funding, nor is it under any obligation to negotiate with any district for services. Under the statute, the charter school receives a payment not lower than the average cost per student of the school district where the charter school pupil resides or where the charter school is located. Thus, in theory, the charter school ought to draw on precisely the same sources of funding as traditional schools managed by a school district, including the local tax base. Most statutes require the school to negotiate both its basic payment and the price of central services provided by the district. Few statutes provide a charter school with such direct access to local tax revenues used for public schools.

On the other side of the spectrum lies Georgia, whose statute contains no reference to funding. Presumably, charter schools in that state continue to be funded as part of the school district they belong to, with budget controls in the hands of the local board. Under the New Mexico statute, a charter school submits its proposed budget to the local school board for approval and submission by the board to the State Department of Education.[88] The charter school's budget is "based on the projected total MEM at that school and the projected number of program units generated by students at that individual school."[89] The local school board establishes a separate account for charter school disbursements[90] and "may retain an amount not to exceed the school district's administrative cost relevant to that charter school."[91] Missouri's statute does not discuss funding.

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[85] AZ § 15-188 (A).

[86] AZ § 15-188 (A), (B).

[87] AZ § 15-188 (B) (2).

[88] NM § 22-8-6.1

Table 2.9

General Educational Funding Formula For Charter Schools

More Autonomy ----------										---------- Less Autonomy
MA	AZ	MN	CA	NM	CO	WI	MI	GA	MO	KS
Average Cost per Student	1. Average cost per Pupil OR 2. Same as District	Per Pupil Unit Cost	Per Pupil Unit Cost	Total MEM and Program Units District May Retain No More Than Admin. Cost of Charter School	No Less Than 80% District Per Pupil Operating Revenues	No More Than District Average Per Pupil	Neg.	Unclear	Unclear	Unclear
Paid Through District	1. Paid Through District OR 2. Paid Direct to School	Paid Through District	Allocated to School in Statute Paid Through District in Fact	Paid Through District	Paid Through District	Paid Through District	Paid to Approving Authority	Paid Through District	Paid Through District	

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[89] NM § 22-8-6.1.

[90] NM § 22-8-15 (C).

[91] NM § 22-8-15 (B).

THE PROCESS OF BECOMING A CHARTER SCHOOL

The steps an applicant must take to obtain approval for a charter school affect autonomy in subtle ways. Of primary concern is the existence of statutory hurdles that might tend to discourage otherwise qualified groups from forming a charter school, or outright barriers to entry that prohibit such groups from operating a charter school. Procedural barriers may limit the de facto autonomy of charter schools, because the state education agencies responsible for granting charters may manipulate the application process to the disadvantage of those charter school proposals calling for the greatest degree of independence from existing rules, regulations, and educational programs.

For example, if local and state education authorities are not required to publicize a state's charter school statute, potentially qualified applicants may never learn of the opportunity. Similarly, a shortage of resources to assist school organizers in the development of their petitions may tend to reduce the pool of potential applicants. Most charter school statutes require applicants to explain not only their educational program, but also their system of admissions, mode of governance, approach to financial management, certain aspects of employer-employee relations, and a host of other areas. In many cases, these issues require the specialized expertise of professional educators, accountants, and lawyers. It is likely that the school will require continuing access to such expertise when it is in operation.

Absent assistance from the state, the costs of developing a credible charter school proposal and continuing to draw on professional services during the school's start-up and operational phases would seem to place all but well-financed organizers (e.g., teachers unions, for-profit businesses, and those with a more sophisticated understanding of grantsmanship) at a real disadvantage. One result may be that the statutory ceiling on the number of charter schools is reached by "insider" applicants, whose petitions effectively preempt the field. A more likely outcome may be that potentially qualified organizers never develop into actually qualified applicants, many of those that do produce credible applications by drawing on volunteer assistance are not truly prepared for the process of negotiating their charter. The charter schools that emerge would have educational programs that are only marginally different from traditional schools and are not truly independent of the traditional school system.

Another factor critical to charter school autonomy is the structure of the approval process. If applicants can only obtain a charter from a single approving authority (e.g., the local school board), the bargaining power of charter school organizers is substantially reduced. The lack of alternative approving authorities can stifle innovative charter school proposals, thus limiting the range of alternative public schools actually offered under the legislation.

Similarly, long delays between the submission of a charter school application and a decision by the approving authority, or the lack of an appeals process, tend to undermine the implementation of charter school legislation and discourage potential applicants.

Finally, the criteria an approving authority must apply in considering a charter school application are of vital importance to autonomy. To the extent that the statutory criteria can be stated as objective standards, the autonomy of individual charter schools is furthered. Objective standards constrain and channel the scope of an approving authority's discretion. Moreover, decisions to reject an application must be accompanied by a record of reasons logically related to the standards. This record may be subject to administrative or judicial review. Subjective criteria threaten autonomy because the approving authority is allowed to exercise very broad discretion on whatever basis the authority considers adequate.

Assistance to Charter School Applicants

A statutory requirement that government provide information and assistance to potential charter school organizers furthers autonomy by broadening the pool of potential applicants beyond those insiders privy to the workings of the education establishment. The lack of a statutory requirement does not mean that state and local government authorities are prohibited from providing such assistance, only that they are under no obligation to do so. Given that charter schools are a deliberate challenge to the traditional system of public schooling, the incentives of state and local educational officials to provide such aid on a continuing basis may be weak. A statutory requirement that basic information on the application process as well as the powers, duties, regulations, and procedures governing charter schools be made widely available to applicants should further the goal of autonomy by providing interested parties with the data necessary to start a charter school.[92]

Charter school legislation is mixed in this area. Many statutes require government agencies to provide some assistance, primarily in the way of notice and information about the existence of a charter school program, a few mandate real assistance, and some offer nothing. Where assistance is required by statute, it tends to be oriented around the application process rather than support for the continuing operation of a charter school (see Table 2.10).

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[92] Eric Premack has a slightly different perspective on the assistance provided by state agencies: "Assistance provided by state education agencies (SEA) or other government sources may be something of a mixed blessing--or perhaps worse. Bureaucracy and civil service do not usually lead to high-quality technical assistance. Worse yet, the "command and control" mindset of many SEA staff makes it difficult for even well-run state departments to provide effective assistance. Instead, the SEA could be required to contract out such work to qualifying individuals or organizations." Personal communication with the author.

Table 2.10

Government Role in Assisting to Charter School Applicants

More Autonomy			Less Autonomy
Agency Directed/Permitted to Assist	Agency Directed to Provide Information	Agency Directed to Give Notice of Program	No Requirement in Statute
KS GA MO AZ	CO MA	CA MN	NM MI WI

Size and Nature of Support for the Establishment of a School

Another aspect of autonomy focuses on the group seeking to organize the school. The goal of autonomy is best served by making formation of the charter school relatively easy, by lowering the barriers to entry into the market for public schools. One such barrier is community support. The smaller the group proposing the charter school, the more capable of action it should be, and the more likely that it will enter into negotiations with an approving authority with truly innovative educational programs. The larger and more diverse the group required to launch a school, the more difficult it will be to get proposals off the ground and the more likely the group will propose compromise school designs, reflecting some lowest common denominator.

Statutes express the support requirement in two ways—the nature of the applicant and affirmative expressions of support for the proposal by members of the community. In both respects, states vary broadly in their requirements of community support for a proposed charter school (see Table 2.11).

Arizona, Kansas, Massachusetts, and Michigan offer the least restrictions on potential applicants. Arizona establishes no particular requirement for community support of a charter school, whether new or converted. Approving authorities "may contract with a public body, private person or private organization for the purpose of establishing a charter school."[93] The statute does not require the approving authority to consider the support of parents, teachers or others for the creation of a charter school. Nevertheless, calculations of the likely support

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[93] AZ § 183 (B)

Table 2.11
Minimum Size and Nature of Charter School Support

More Autonomy -- Less Autonomy

	AZ	KS	MI	MA	CO	MN	WI	CA	GA	NM	MO
New School	Public Body OR Pvt. Person OR Pvt. Org.	School Bldg. Empl. Group OR School Dist. Empl. Group OR Educ. Services Contr. OR Other Persons or Entities	None	Include but not limited to: Two Teachers OR 10 Parents OR Business Entity OR Corp. Entity	None	One Teacher	Local Board Init. OR 10% of Teachers in District	10% of Teachers in District OR 50% Teachers in a District School	Does Not Apply	Does Not Apply	Does Not Apply
Convert School	Public Body OR Pvt. Person OR Pvt. Org.	School Bldg. Empl. Group OR School Dist. Empl. Group OR Educ. Services Contr. OR Other Persons or Entities				90% Teachers at School	Local Board Initiat. OR 50% of Teachers at School	10% of Teachers in District OR 50% of Teachers at a School	66+% of Teachers at School	65% of Teachers at School AND 66+% of Parents at School	School District AND 5 Person Mgmt Team
Convert School District								50% of Teachers in District		Does Not Apply	

of parents are implicit in an applicant's estimate of initial enrollment on which its proposed staff and budget plans are based.

The Michigan statute only requires that the applicant and proposed board members be identified in the proposal.[94] In Massachusetts, the "persons" eligible to seek a charter from the state secretary of education "include, but (are) not limited to, a business or corporate entity, two or more certified teachers, or ten or more parents."[95] Kansas permits "a school building or school district employees group, an educational services contractor, or any other person or entity" to petition for the establishment of a charter school.[96]

Aside from Arizona, Massachusetts, and Michigan, every state requires that the applicant at least apply first to the local school district to form a charter school. Most statutes also require varying degrees of teacher and, to a lesser extent, parental support before a district may authorize a charter school

The legislation passed by New Mexico and Georgia allows only the conversion of existing schools. As noted above, these statutes assume that students from the area normally assigned to the converted school will continue to attend after conversion, and that the teachers normally assigned to the school will not be reassigned. Consequently, the school itself is considered the applicant.[97] These statutes require a high degree of support from teachers and parents at the school. New Mexico requires that 65 percent of the teachers sign a petition in favor of the school and that parents have "substantial involvement in development of the charter school proposal and support" conversion.[98] Georgia requires that over 66 percent of the teachers and over 66 percent of the parents vote in favor of initiating a petition to convert.[99]

Alternative Sponsors of Charter Schools

Autonomy is affected by the alternative routes to approval available to those organizing the charter school. School organizers that can apply directly or by right of appeal to two or more potential approving authorities are in a better bargaining position than those who must seek approval from a single authority. The worst situation is where an applicant must receive the approval of more than one authority. Only four of the 10 statutes provide more than one route to charter approval (see Table 2.12).

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[94] MI § 502 (3) (a) (c).

[95] MA ch. 71, § 89

[96] KS § 4 (b).

[97] NM § 22-8A-4 (A), GA § 22-2-255 (c)

[98] NM § 22-8A-5 (B) (1), (2).

[99] GA § 22-2-255 (c) (2), (3).

Michigan offers the charter school organizer the largest number of potential approving authorities. Contracts may be granted by four entities: the board of a school district, an intermediate school board, the board of a community college, or the governing board of a state public university.[100] In addition, if the school district board denies the contract, the statute authorizes an applicant to place it before the district's eligible voters if at least 15 percent of the voters sign a petition for that purpose.[101]

In three states with charter school statutes, California, Colorado, and Minnesota, schools may be authorized by one of two bodies—the local level school board and some higher level body on appeal. The remaining statutes provide only one avenue for approval of a charter school application.

Table 2.12

Approving Authorities

	More Autonomy					**Less Autonomy**					
	MI	AZ	CA	CO	MN	MA	MO	WI	NM	KS	GA
Local School District/Board	✓	✓	✓	✓	✓		✓	✓		✓ Plus State Board	✓ Plus State Board
Intermediate/ County Board	✓		✓								
Community College	✓										
State University	✓										
State Board of Education		✓		✓	✓				✓	✓	✓
State Secretary of Education						✓					
State Board for Charter Schools		✓									
Referendum	✓										

Key: ✓ = provided in statute; [blank space] = not addressed in statute.

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[100] MI § 502 (2) (a) - (d)

[101] MI § 503 (2)

The Approval Process

How charter school statutes treat the approval process is important to autonomy because the relevant provisions can give the initiative to charter school applicants or place it in the hands of approving authorities. Unless the initiative is placed in the hands of applicants, charter school proposals may never be developed or implemented, because approving authorities may decide not to act. Of critical importance to the goal of autonomy are statutory provisions: giving applicants the right to initiate a charter proposal without prior action by the local or state board of education, specifying the period after submission of a proposal within which the approving authority must act, requiring public hearings on the proposed charter school prior to decisions by the approving authority, and providing the applicant with the right to appeal to a higher authority or pursue an alternate route to approval if denied a charter by a particular approving authority.

Most statutes give the charter school applicant the right to initiate the petition process, but otherwise the statutes vary widely in their procedural requirements (see Table 2.13).

The California and Colorado statutes provide all of the procedural factors supportive of school autonomy. For example, after an applicant in California has obtained the requisite number of teacher signatures on the charter school petition, the petition may be submitted to the school district's governing board.[102] Within 30 days, the board "shall hold a public hearing on the provisions of the charter at which time the board shall consider the level of employee and parental support for the petition."[103] After the hearing, and within 60 days after submission of the petition, the district board shall either grant or deny the charter.[104] However, if the board and the applicant agree, the decision date may be extended by another 30 days.[105] On approval of the petition, the petitioners must notify the state board of education in writing and provide a copy of the approved petition.[106]

If the district board does not approve the charter petition, the petitioners may request the county superintendent of schools to form a panel to review the district board's decision.[107] The panel consists of three governing board members and three teachers from other districts

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[102] CA § 47605 (a).

[103] CA § 47605 (b).

[104] CA § 47605 (b).

[105] CA § 47605 (b).

[106] CA § 47605 (i).

[107] CA § 47605 (j) (1).

Table 2.13

The Approval Process

	More Autonomy										Less Autonomy
	CO	CA	NM	MA	AZ	MI	GA	KS	MN	WI	MO
Approving Authority First Requests Right to Charter Schools									✓	✓	✓
Applicant Initiates Process	✓	✓	✓	✓	✓	✓	✓	✓			
Review by Advisory Committee	✓								✓ In Some Cases		
Decision by Approving Authority	✓			✓	✓		✓	✓	✓		
Public Hearing	✓	✓						✓		✓	
Definite Timetable for Decision	✓	✓		✓	✓			✓		✓	
Approval of Higher State Authority Required			✓				✓	✓			
Applicant has Right to Appeal	✓ To State Bd. of Educ.	✓ To County Bd. of Educ.			✓ No but multiple routes to approve	✓ No but multiple routes to approve AND Right to put to public vote			✓ If 2 on local board voted to approve ...to State Bd. of Educ.		
De Novo Review by Appellate Authority	✓	✓							✓		

Key: ✓ = provided in statute; [blank space] = not addressed in statute.

in the county—unless the county consists of only one district, in which case, the panel members will be drawn from other counties.[108] "If the review panel determines that the governing board failed to appropriately consider the charter request, or acted in an arbitrary manner in denying the request, the review panel shall ask the governing board to reconsider the charter request."[109] The superintendent holds the tie-breaking vote.[110] If the district board reconsiders but still refuses to grant a charter, the petitioners may seek approval from the county board of education.[111] Within 30 days of the petitioner's request, the county board must hold a public hearing on the application.[112] After the hearing, and within 60 days of the petitioner's request, the county board must decide whether to grant the charter.[113]

Georgia places the initiative with the school's organizers, but provides no appeals process and specifies no timetable for decision. Under Georgia's charter school statute, charters are approved by the State Board of Education.[114] "Each year, the state board must review petitions for charter school status received from local schools."[115] The statute establishes no time requirements for the board's decisions. After the teachers and parents have voted to pursue charter status, the local school board must approve the petition and forward it to the state board for decision.[116] If the local board does not approve the petition, it must nevertheless forward the petition to the state board, and inform the state board of the reasons for disapproval.[117] The state board may request a hearing to obtain additional information, but the statute appears to require local board approval before the state board may grant a charter.[118]

Under the Wisconsin statute, "local school boards request the state superintendent for approval to establish...charter schools."[119] Thus, in a formal sense, the initiative for the formation of a charter school lies with the local board rather than the potential charter school petitioner. The state superintendent is obligated to approve the first 10 requests received.[120] Then, "[i]f a school board has received approval (from the state superintendent), within 30 days after receiving a petition...the local school board shall hold a public hearing on the petition.... After the hearing, the school board may grant the petition." [121] One reasonable inference is that a decision is expected within 30 days. In addition, "[t]he school board may on its own initiative contract with an individual group to operate a school as a charter school." [122] There is no appeals process and the board is not specifically required to rule on a petition by a date certain.

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[108] CA § 47605 (j) (1)

[109] CA § 47605 (j) (2)

[110] CA § 47605 (j) (2)

[111] CA § 47605 (j) (3)

[112] CA § 47605 (j) (3). This paragraph requires county board to "hold a public hearing in the manner described in subdivision (b)."

[113] CA § 47605 (j) (3)

[114] GA § 22-30.5-255(d)

[115] GA § 22-30.5-255(d)

[116] GA § 22-30.5-255 (c) (1), (g)

[117] GA § 22-30.5-255(g)

[118] GA § 22-30.5-255(g)

[119] WI § 118.40 (1)

[120] WI § 118.40 (1)

Approval Criteria and Considerations

Whether the petition, application or draft contract submitted by a charter school applicant contains the provisions and/or signatures required by state law is a matter largely related to the accountability side of the basic bargain. These and other elements of accountability are discussed in Section 3. The discretion given by statute to the approving authority in deciding whether or not to grant the charter (assuming the content requirements are met) relates to the goal of autonomy. To the extent that the discretion delegated by the legislature to the approving authority focuses on the content of required contractual provisions as judged by specific objective criteria, approval resembles a ministerial task, and is more supportive of the goal of school autonomy. The more the area of discretion delegated to the approving authority strays from those narrow requirements to more subjective judgments of public policy, the easier it is for approving authorities to raise barriers to school designs that radically depart from traditional educational programs.

Many statutes require some number of teacher and/or parent signatures on the petition, and give priority to applications for schools supporting at-risk students. All charter school statutes, except Missouri's, set forth at least some contractual requirements that must be reflected in charter applications before the approving authority may grant a charter. However, no statute requires an approving authority to approve a charter application that meets these contractual requirements. The range of discretion granted to approving authorities in the statutes varies, but most grant a very substantial amount (see Table 2.14).

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[121] WI § 118.40 (2) (a)

[122] WI § 118.40 (3)

Table 2.14
Approval Criteria and Considerations

	More Autonomy										Less Autonomy
	MI	AZ	MO	MA	MN	GA	NM	WI	CA	CO	KS
Include Contractual Provisions Required by Statute	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Community (Teacher and/or Parent) Support					Only to Convert School	✓	✓	Not if School Bd. Starts	✓	✓	
Best Interests of the Pupils, School District, or Community										✓	
Liberal Interpretation to Support Goals of Statute										✓	
Priority to Schools for At-Risk Students								✓	✓	✓	✓
Geographic Distribution of Schools										✓	
No Arbitrary Decisions									✓	✓	
Prior Review by Advisory Committee					✓					✓	
Competitive Bidding	✓		✓								

Key: ✓ = required by statute; [blank space] = not addressed in statute.

Colorado's charter school legislation contains the most extensive discussion of approval criteria. The provision describing the legislature's intent contains the admonition that "the provisions of this article (i.e., the charter school statute) should be interpreted liberally to support the findings and goals of this section and to advance a renewed commitment by the state of Colorado to the mission, goals and diversity of public education."[123] The provision of the act dealing with negotiations over charter school financing and the supply of services by local school districts reinforces this inclination. "It is the intent of the general assembly that funding and service agreements...shall be neither a financial incentive nor a disincentive to the establishment of a charter school."[124] The statute also notes the legislature's "intent...that priority be given to charter school applications designed to increase the educational opportunities of at-risk pupils."[125]

However, this expression of support for the charter school concept is undermined by the statute's statement of grounds on which a charter school may be denied. Colorado requires that a charter school application be reviewed by the district accountability commission and contain certain provisions and evidence of community support, [126] but does not specifically require the local board of education to approve applications that meet those requirements.[127] Indeed, the board is entitled to deny a charter in order to "reasonably limit the number of charter schools in the district." [128] Moreover, the statute allows appeal of a local board's decision to grant a charter on the grounds that the grant is not consistent with an equitable distribution of charter schools across the state, among other reasons.[129]

Colorado's appeals process incorporates a broad standard of review, and one that allows the state board to review the local board's action de novo. "If the state board finds that the local board's decision [to deny a charter] was contrary to the best interests of the pupils, school district, or community," the state board may remand the decision to the local board for reconsideration and, if the local board refuses to grant a charter after reconsideration, may require the local board to grant the charter.[130] Where the local board decided to grant a charter the state board may overturn the decision only if it is found to be "arbitrary and capricious," or if the proposed charter would violate civil rights laws or court orders, threaten pupil health and safety, would result in more than the permissible number of charter schools in the state (50), or if granting the charter would be inconsistent with the equitable distribution of charter schools.[131] Thus, at both the local and state levels, approving authorities have enormous discretion in their decisions to grant or deny charters.

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[123] CO § 22-30.5-102 (2) (f).

[124] CO § 22-30.5-112 (2) (d).

[125] CO § 22-30.5-109 (3).

[126] CO§22-30.5-106.

[127] CO § 22-30.5-107 specifies a timetable for local board decisions but does not specify any decision criteria.

[128] CO § 22-30.5-109 (1).

[129] CO § 22-30.5-108 (4) (a) (I) (E).

[130] CO § 22-30.5-108 (2) (a), (d).

THE POSSIBILITY OF CHARTER REVOCATION AND RENEWAL

The autonomy of a charter school depends not only on the process by which the charter is acquired and the powers possessed by an operational school, but also the security of its charter. The question examined below is, "how can a charter school be terminated or continued?" This aspect of autonomy concerns expectations of a charter school's longevity, and particularly understandings about the circumstances under which charter school organizers will keep or lose their charter. The duration of the initial charter, the processes of revocation and renewal, and the legislature's review of the success or failure of the charter school program are all important topics related to this aspect of autonomy.

Duration of the Initial Contract

Charter schools are an experiment in public education. Thinking on the value of alternative curriculum and pedagogy is constantly evolving. No one knows precisely how much autonomy an individual charter school must have to improve educational outcomes. There is great debate over the full range of outcomes that educators should be responsible for and considerable uncertainty about appropriate means of measuring those outcomes. Moreover, few new enterprises are successful overnight. Most go through a period when mistakes, unanticipated problems, and temporary setbacks are expected. Schools are probably no different in this respect from other entrepreneurial activities.[132] Taken together, these factors suggest that the organizers of charter schools will need time to prove the value of their various approaches to public education.

The amount of time charter schools are given to demonstrate their effect on student learning is bound to affect their actual scope of autonomy. Of critical importance is the period of the initial contract established in the charter school statute, particularly if the criteria for renewal are essentially subjective, leaving renewal to the discretion of approving authorities.

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[131] CO § 22-30.5-108 (3) (a).

[132] "These are very high-risk small enterprises with a propensity for failure,' warned Eric Premack, a senior analyst with BW Associates, a policy-research firm that is working with a number of charter schools in California." Lynn Olson, "Varied Laws Raise a Question: What is a Charter School," *Education Week*, January 19, 1994.

Other things being equal, the shorter the interval between establishment of the charter school and the approving authority's decision about renewal or revocation, the less the "successful" school design is likely to stray from well-tested (i.e., traditional) approaches to public education. Longer periods improve the organizer's chances of learning how to modify their designs and show positive results. This permits greater opportunity for innovation in educational programs, and may encourage a broader array of potential organizers to go through the approval process. The approach most supportive of autonomy would provide for a contract of indefinite length subject to termination only if the school failed to meet its objective contractual obligations. Such an approach would assure that a school would not disappear solely because an approving authority failed to renew for reasons unrelated to the school's educational effectiveness. (Of course a school could still fail by proving unable to attract a sufficient number of students to meet its financial obligations.)

Most charter school statutes have both relatively short contractual periods and subjective criteria for revocation and renewal (see Tables 2.15 and 2.16). Michigan has the only statute which permits a contract of indefinite duration subject to termination only for failure to conform to a charter's contractual terms. The legislation contains no reference to contractual length, nor does it discuss renewal. Instead, the statute requires that the contract contain procedures and grounds for revocation.[133] Most states establish relatively brief contractual periods, with the possibility of renewal.

Table 2.15

Duration of Initial Contract

More Autonomy ----------	----------	----------	----------	---------- Less Autonomy
No Maximum	Five Years	Five-Year Maximum	Three Years	Three-Year Maximum
MI	AZ	CA CO MA MO NM WI	KS	GA MN

It is of fundamental importance to charter school autonomy that decisions to revoke or deny the renewal of a charter be based solely on objective criteria. A charter school that is not guaranteed the right to hold the charter absent specific grounds for revocation or nonrenewal holds it at the pleasure of the approving authority. Such a relationship clearly threatens the school's capacity for independent decisionmaking. Autonomy is undermined where approving authorities have the right to terminate a charter school for reasons unrelated to the school's success in carrying out its educational mission or its responsibilities as a public institution.

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[133] MI § 503 (4) (f).

Objective grounds for the revocation or non-renewal of a charter include significant violations of charter terms, failure to achieve specified educational outcomes, failure to meet generally accepted standards of fiscal management, or significant violations of the law. Confining the grounds for termination to this type of list maintains the school's capacity to control decisions essential to the success of its educational program and resist unwarranted outside interference. Nevertheless, the statutes generally permit revocation and renewal decisions on the basis of essentially subjective criteria (see Table 2.16).

Table 2.16

Criteria for Revocation or Renewal

More Autonomy ----------	----------	---------- Less Autonomy
Require Non-renewal/Revocation if Objective Criteria Not Met	Allow Renewal/Continuation if Objective Criteria Met	Explicitly Permit Non-Renewal/Revocation on Subjective Grounds Even if Objective Criteria Met
KS*	AZ**	CO
	CA	
	GA	
	MA	
	MI	
	MN	
	MO	
	NM	
	WI	

Note: * applies only to revocation; ** applies only to renewal.

The Kansas statute contains objective criteria only for charter revocation.[134] No charter school statute promotes autonomy by explicitly requiring that a charter be renewed if objective criteria like those discussed above are met. Most statutes contain objective criteria for termination and renewal, but also grant approving authorities considerable discretion in termination and renewal decisions on more subjective grounds.

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[134] KS § 5 (a)

Of particular concern to the value of school autonomy are provisions like that in the Colorado statute, in which a school that meets its contractual obligations, achieves the specified educational outcomes, meets accepted accounting standards, and stays well within the law, might still see its contract terminated or not renewed because the local board of education determines that "it is not in the interest of the pupils residing within the school district to continue operation of the charter school."[135]

The Processes of Revocation and Renewal

A fair process for deciding on renewal or termination is also important to autonomy. As with approval, the process by which a contract is revoked or renewed can affect autonomy by giving the initiative to the charter school organizers or the approving authorities. The right of charter holders to be given notice of the complaint against them and the opportunity for a public hearing, a definite timetable for decisions by approving authorities, and the possibility of probation are all important to autonomy.

Two areas of particular interest are the burden of proof in revocation and renewal actions and the charter holder's right of appeal. Is the assumption at the start of the proceeding that a charter school contract will be renewed unless it fails one of the criteria discussed above, or will those seeking renewal be in the same position as a new applicant—carrying the burden of proving the validity of their educational program to the satisfaction of the approving authority? In the case of revocation, is the burden of proof with the those who seek to end the school or those who hold the charter? After an approving authority revokes or refuses to renew a charter, does the holder have a right to appeal?

No charter school statute explicitly requires that a contract be renewed. This suggests the burden lies with the charter school (see Tables 2.17 and 2.18). Arizona, Missouri, and New Mexico provide no means of revoking a school's contract.

The arrangement most conducive to autonomy is Michigan's, which specifies no time limit on a charter school contract. This would allow a school to remain operating indefinitely unless the contract is terminated for good cause.[136] As for termination procedures, however, the Michigan statute provides no more than a requirement that the approving authority find a violation of the conditions discussed in the above subsection.[137]

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[135] CO 22-30.5-110 (4). The fact that Colorado provides for an appeals process which allows the state board to review the local board's decision de novo ameliorates the effect of this criterion to some extent. See CO § 22-30.5-108 (2) (a), (d).

[136] MI § 503 (4) (f)

The next approach most favorable to autonomy requires that the approving authority conduct a public review and provide charter school operators with the right of appeal. Colorado's legislation contains a well-defined review procedure, with an appeals process. It

Table 2.17

The Revocation Process

	More Autonomy										Less Autonomy
	AZ	MO	NM	CO	KS	MN	MA	CA	GA	WI	MI
Notice to School				Implied	✓	✓					
Prior Committee/ Local Board Review				✓							
Public Hearing				✓	✓	✓					
Approving Authority Finds Violation				✓	✓	✓	✓	✓	✓	✓	✓
Probation					Implied		✓				
Right of Appeal				✓	No						
Timetable				✓	✓	✓					
Participants Vote to Revoke									✓		

Key: ✓ = required in statute; [blank space] = not addressed; No = Not allowed.

Table 2.18

The Renewal Process

	More Autonomy										Less Autonomy
	MI	MO	CO	KS	MN	AZ	CA	GA	MA	NM	WI
Notice to School				✓		✓					

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[137] MI § 527

Prior Committee/ Local Board Review			✓							Option	
Public Hearing			✓	✓							
Approving Authority Decision			✓	✓	✓		✓	✓	✓	✓	✓
Right to Appeal			✓	No							
Timetable			✓	✓	✓	✓					

Key: ✓ = required in statute; [blank space] = not addressed.

requires that revocation and renewal decisions be made following the same procedures used for deciding on approval of the initial application.[138]

On the other side of the spectrum is Massachusetts, which allows the secretary of education to decide to revoke or not renew a charter if the school has not fulfilled conditions imposed by the secretary in connection with the grant, or if the school has violated any of its charter provisions.[139] The statute provides for no specific procedure. It merely allows the secretary to place a "charter school on probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked."[140] The statute provides for no appeal of the secretary's decision.

Duration and Review of the State's Charter School Program

In most statutes, the charter school program is limited by the number of schools that may be established, but not by any period during which schools may be formed under the legislation. Half of the statutes require state education authorities to report on the program, but the nature of the reporting requirement is often vague. The requirement for review and the possibility of ending the entire charter school program is not necessarily contrary to the goal of autonomy, but the period of observation on which the report is based can affect the objective. A brief period may introduce conservatism into the approval process because proponents of the charter school concept holding office in the approving authorities will want to improve the chances of success. In this case, the schools granted charter school status may not depart much from the traditional mold. Innovative approaches which are approved may find it hard to prove their worth in a brief review period. The result may be a tendency to discourage innovative thinkers from organizing charter schools, leading to the establishment of a more narrow range of school designs.

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[138] CO §22-30.5-110(5)

[139] MA ch. 71, § 89

[140] MA ch. 71 § 89

From the standpoint of autonomy, the best approach would be to weed out schools that fail to meet objectives, rather than subject the entire program to a single test. The worst position is a short observation period.

Statutory provisions regarding review of the charter school program vary (see Table 2.19). The Arizona, New Mexico, Michigan, and Minnesota statutes provide no termination date and do not require any report to the legislature on the program. They generally provide some method of weeding out schools that fail to meet their contractual requirements or predetermined standards. Kansas, Georgia, California, Wisconsin, and Massachusetts have no limits on the period during which charter schools may be established, but do require general reports to the legislature on the program by a specified date.

Table 2.19

Report on the Charter School Program

	More Autonomy --------									-------- Less Autonomy
	AZ	NM	MI	MN	KS	GA	CA	WI	MO	MA	CO
Program Start (First School)	1995 ?	1994	1994	1992	1995 ?		1993	1994	1995	1995	1994
Program Termination	None	None	None	None	None	None	None	None	2000	None	1998
Report Due	None	None	None	None	Each Year	Each Year	1998	2000	2000	1998	Each Year ...and by 1997
Review Period	None	None	None	None	None	Each Year	6 Years	6 Years	5 Years	3 Years	Each Year ... and at the end of 3 Years

Key: ? = unclear.

SUMMARY ASSESSMENT

This section examines 20 topics contained in the provisions of the charter school statutes which influence school autonomy. In most cases, each of these categories contains several distinct elements with related effects on the ability of a charter school to control its destiny. After describing how these categories relate to the autonomy of a charter school, an effort was made to place the state's statutory provisions along a very simple continuum from "more" to "less" supportive of school autonomy. The assessment is a matter of judgment, admittedly crude, and probably more accurate at either end of the spectrum than in the middle. To summarize, these initial assessments of individual categories require still more judgment. Nevertheless, it may be helpful to provide a rough appraisal of the charter school statute's overall support for autonomy, to identify the most supportive statutory provisions and, where possible, to compare the extremes.

The Nature and Scope of an Individual Charter School's Operations

Charter schools organized under the Massachusetts statute have great operational autonomy. First, Massachusetts charter schools are completely independent of the local school board. They are distinct legal entities. In addition, the state charter school statute explicitly grants individual schools the right to acquire property, determine budgets and curriculum, receive and disburse funds, enter into contracts, hire and fire employees, borrow funds, and act as the public employer in collective bargaining under Massachusetts law governing labor relations in the public sector. The statute also grants a charter school any power of a business corporation not incompatible with the charter school statute itself.

In the second area, exemptions from state and local regulations, no state is a clear winner. Massachusetts frees charter schools from the control of school districts but not from state laws governing other public schools. Several statutes contain provisions granting blanket exemptions, including California, Minnesota, and Wisconsin, but most actually limit the scope of waivers through other provisions that have the effect of requiring school organizers to negotiate waivers with the approving authority.

In the third area, freedom from restrictions on a charter school's affiliations, Minnesota appears to take the lead. By allowing charter schools to organize as cooperatives, Minnesota permits charter schools to be run on a for-profit basis (i.e., to distribute profits to members of the cooperative). Minnesota also allows private schools to convert to charter school status, something no other state explicitly permits.

Fourth, in the area of freedom from restrictions on a charter school's admissions policies, Massachusetts and Kansas are close competitors. Only Massachusetts charter schools are explicitly authorized to discriminate against prospective students on the basis of academic standards or affinity with the school's programmatic focus (i.e., arts, science, math). The Kansas statute does not prohibit particular forms of discrimination; instead it requires that charter school applicants explain their admissions policies and the student body reflect the locality's racial and socio-economic character. Admissions criteria like those authorized by the Massachusetts statute are not ruled out. Every other statute requires essentially open admissions, with some allowance for discrimination in favor of local students when a school converts to charter status.

In the area of labor relations, Missouri charter schools have great independence, because that state does not permit collective bargaining in public education. Therefore, the school's management team has substantial power over its employees because they have no right to bargain as a unit with management.

Among the states that permit or require collective bargaining in public education, Massachusetts charter schools have the most autonomy, followed closely by Minnesota. Both states allow those running the charter school to bargain directly with the teachers at the school, separate from any collective bargaining agreement between a school district and a district teachers' union. Both permit a charter school to hire and fire its teachers directly. Both also allow teachers who opt to leave positions in a school district to teach in a charter school to return to a position in the district. This gives charter schools access to a substantial pool of qualified teachers. Massachusetts and Minnesota also allow district teachers joining charter schools to remain in the state teachers' retirement system.

In practice, the Massachusetts statute is likely to offer charter schools the greatest degree of autonomy in self-governance. If formed as a non-profit corporation, as preferred by the secretary of education, the charter school's self-government organization can accommodate a wide range of preferences in terms of interest group representation and the protection of minority stakeholders rights, for example. The statutes of California, Colorado, and Wisconsin contain no provisions covering the self-governance of charter schools. On first impression, by virtue of this apparent freedom of choice, those statutes appear to offer charter schools the greatest degree of autonomy. But the apparent autonomy may be substantially undermined if governance structures become a matter of negotiation between a charter school applicant and the approving authority.

Because the Massachusetts charter school statute essentially contemplates that charter schools will be new schools rather than the conversion of public schools operating under local school district, it does not address the problem of teachers or students displaced by formation of a charter school. In any event, the legislation does not make the charter school responsible for displaced persons. Of those statutes that do contemplate conversions, Wisconsin charter schools are not responsible for displaced teachers. With regard to displaced students, Wisconsin goes one step further, placing the burden squarely on the district.

The provisions of the Massachusetts charter school statute on student transportation are highly favorable to charter school independence. Depending on the student's place of residence, the district or the state are responsible, rather than the charter school.

Financial arrangements mandated by the Arizona and Massachusetts statutes offer charter schools the most autonomy. Arizona charter schools sponsored by state boards are funded directly by the state. Under Massachusetts law, a charter school receives its funding from the school districts where the student resides, but the school does not bargain with any district for its funding, nor is it under any obligation to negotiate with any district for services. Under the statute, the school receives a payment not lower than the average cost per student of the school district where the charter school pupil resides or where the charter school is located. Thus, it draws on precisely the same sources of funding as traditional schools managed by a school district, including the local tax base. Every other statute requires the school to negotiate both its basic payment and the price of central services provided by the district. No other statute provides a charter school with access to local tax revenues used for public schools.

The Process of Becoming a Charter School

Overall, the Michigan charter school statute's treatment of the approval process provides the most substantial support for the autonomy of individual charter schools. It contains no specific requirement that the grant of a charter be based on evidence of community support. It contains no specific criteria governing charter approval, but implies that a charter will be granted by a process of competitive bidding. Most important from the standpoint of school autonomy, the Michigan statute offers five separate routes to charter status, which in theory allows the school organizer to seek the most favorable charter terms, and vastly increases the organizer's negotiating power with any approving authority. The Georgia statute is superior in terms of its requirement that the State Department of Education assist charter school applicants, while Michigan does not even provide for a means of notifying potential applicants that the charter school option exists. Colorado is clearly superior in terms of the application process and particularly the right of applicants to appeal the decision of

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approving authorities not to grant a charter, but Michigan makes up for this shortcoming with its multiple routes to charter status.

The Possibility of Revocation and Renewal

No statute is clearly superior in its support of charter school autonomy in the area of revocation and renewal. In terms of contract duration, the Michigan statute offers the advantage of not specifying a maximum term. This permits a school charter to rest solely on the performance of charter obligations. As long as the school meets those obligations it will continue to exist; the contract will not come up for renewal. Missouri and New Mexico have no revocation procedures, and Missouri and Michigan have no renewal procedures. Of those states that do, Colorado's charter school legislation is probably the most protective of an existing charter school's autonomy in terms of due process; providing definite timetables for decision, public hearings, and a right to appeal. But Colorado expressly permits a charter to be terminated or not renewed even if the school meets its contractual obligations. The other statutes are superior only in that they do not contain this express provision. None require the approving authority to grant a charter under specified conditions; all allow the authority to do so at its own discretion. In terms of a review of the state charter school program, New Mexico is probably the most favorable to school independence. Alone among all the statutes, it contains no such requirement.

III. ACCOUNTABILITY

INTRODUCTION

A fundamental tenet of the charter school movement is the need to hold those who run these new autonomous schools accountable for student performance. This section examines how accountability is defined and affected in the charter school statutes. Under charter school legislation, the grant of a charter to school organizers carries with it the responsibility to achieve certain educational outcomes specified in the negotiated charter or imposed by the charter school statute. Of course, charter schools are held accountable to the parents of students in the sense that parents are completely free to move their children to another charter or traditional public school. They are also held accountable to parents and other stakeholders by the school's method of self-governance.[14] However, to assure that charter school organizers meet their obligations to the state (acting on behalf of the public at-large), charter school legislation also makes the school accountable to approving authorities, most often to local school boards or state boards of education, but in some cases to other state education agencies established by the legislature, such as state universities and community colleges. This chapter emphasizes the accountability of charter schools to approving authorities.

Under the legislation, charter schools are held accountable to approving authorities by:

- **The requirements to become a charter school.** This covers the representations charter school organizers are required to make in their application to approving authorities. These representations form the factual basis of decisions made by approving authorities on the approval of proposed charter schools.
- **The monitoring of a school's ongoing operations.** Most statutes require charter schools to conduct regular audits of their operations and provide reports to approving authorities, other state agencies, and the public. Legislation also obligates state education authorities to monitor the charter school program, often by independent means.
- **The possibility of charter revocation and renewal**. Accountability requires that schools that fail to meet the terms of their charter or other obligations imposed by the charter school statute be subject to some form of discipline, including

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[14] Of course, private and parochial schools operate under this informal, yet effective, method of accountability. Those schools that fail to meet the market's needs go out of business. Successful schools are rewarded. The consequences of failure--and of success--provide powerful incentives for such schools to maintain high quality education services. Charter school advocates expect choice in public education to create a similar environment in public schooling.

termination of their charter. Of critical importance are procedures and criteria by which approving authorities may revoke or refuse to renew a charter.

THE PROCESS OF BECOMING A CHARTER SCHOOL

Charter schools are a form of public schooling operated by private persons or entities under a grant of power given by an approving authority according to statute. No one has the right to a charter. Potential school organizers must apply for one and meet certain requirements established by the charter school legislation or by the approving authority pursuant to a delegation of power contained in the charter school statute. If and when those requirements are met in the eyes of the approving authority, it may grant a charter.

Under all charter school statutes, the first step taken by a potential charter school organizer is to draw up and submit a charter school application. The application contains provisions determined by the legislation and perhaps supplemented by additional provisions established by the approving authority. These provisions require applicants to explain to the approving authority why they should receive a charter. Applicants make representations as to the quality of the proposed school's staff, educational program, financial planning, and community support. These representations form a basis for an approving authority's decision to grant a charter. Moreover, to the extent they are embodied in a school's charter, these representations also establish the preconditions of an individual school's operation, providing implicit constraints on the school's subsequent actions.

Fundamental to the accountability side of the basic bargain embodied in charter school legislation are provisions relating to the specification of educational outcomes the charter school will pursue, measures of performance, and means of accounting for that performance. Other important requirements include statements describing: the evidence of community support for the proposed school; the means of oversight for the school's financial and programmatic management; the nature of the school's internal self-governance; its admissions, suspension, and expulsion policies; its legal liability; and its procedures for assuring the health and safety of students, employees, and visitors.

With a few exceptions, Massachusetts and New Mexico leave the establishment of contractual requirements to state education authorities.[142] Missouri impliedly leaves them to the district.[143] The remaining statutes describe specific, and in some cases detailed, provisions that must be included in any charter school contract.

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[142] MA ch. 71, § 89; NM § 22-8A-7

Evidence of Community Support for the Proposed School

Charter schools are public schools. Public institutions are ultimately accountable to the public-at-large, so it is not unusual for state charter school statutes to require that charter school applications include some evidence of community support for the proposed school. By this measure, some statutes demand a high degree of accountability—requiring that the application include an objective demonstration of support by teachers and parents. This is particularly true of statutes that explicitly contemplate the conversion of existing public schools to charter school status (see Table 3.1).

Table 3.1

Requirement of Evidence of Community Support for a Conversion

	More Autonomy										Less Autonomy
	GA	NM	MN	WI	CA	KS	AZ	CO	MA	MI	MO
Teachers	66+%	65%	90%	50%	50% of any School OR 10% of the District	Describe					
Parents	66+%	Subst'l Invlmnt				Describe					

Conversions are bound to displace at least some students and teachers who do not want to participate in the proposed charter school program. Consequently, it is not unusual for statutes contemplating conversion to establish a high threshold of teacher and parent support for a proposed charter school. For example, under Georgia's legislation, petitions submitted to the state board by a local public school to convert to charter status must first be approved by over two thirds of the teachers and over two-thirds of the parents voting on the subject, as well as by the local board of education.[144] Nevertheless, five charter school statutes set no requirement for community support of conversion. The required threshold of support for a new school tends to be relatively low, where it exists at all (see Table 3.2). This may reflect the fact that a new school is unlikely to displace students from their current school. California requires that 10 percent of the teachers in the district or 50 percent of the teachers in any existing school support formation of the school.[145] Colorado's statute merely directs that charter school applications contain "[e]vidence that an adequate number of parents, teachers, pupils, or any combination thereof support the formation of a charter school."[146] Adequacy is presumably a matter for the approving authority to determine.

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[143] See MO 18.2 (1).

[144] GA § 20-2-255 (c) (1) - (3).

Table 3.2

Requirement of Evidence of Community Support for a New School

	More Autonomy										Less Autonomy
	CA	WI	MI	CO	KS	AZ	MA	MN	GA	NM	MO
Teachers	50% of any School OR 10% of the District	10% But School Board may contract on own		Adequate Support	Describe				Does Not Apply	Does Not Apply	Does Not Apply
Parents			Majority of District voters if Put to Vote	Adequate Support	Describe				Does Not Apply	Does Not Apply	Does Not Apply

A Description of the School's Educational Program

At the core of the charter school movement lies a belief that the traditional approach to public education is failing, and that autonomous schools can do better than those required to follow state and district rules and regulation.[147] A charter school applicant's acceptance of accountability implies some willingness to explain how a proposed alternative to the traditional approach will yield superior results, and/or a willingness to meet some standard established by the state measured in terms set by the state.

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[145] CA § 47605 (a)

[146] CO 22-30.5-106 (1) (c)

[147] Why the interest in charter schools? ... [C]harter schools are accountable to parents and taxpayers. Each charter spells out measurable student learning outcomes and operating procedures for which the school is held accountable. ... [C]harter schools are freed from many existing, often cumbersome rules to which public schools must normally adhere. Consequently, charter schools respond to criticisms that public schools are so over-regulated that they are unable to adapt to new circumstances or to public demand for improvement.
Marcella R. Dianda and Ronald G. Corwin, *An Early Look at Charter Schools in California* 1, Southwest Regional Laboratory, April 1993.

Almost every charter school statute states some requirement that the application describe the proposed approach to public education (see Table 3.3). Elements of this explanation can include some description of the applicant's educational program, the educational outcomes that should follow from adoption of the program, methods of measuring progress towards those outcomes, some sense of the timetable under which a proposed charter school will achieve its standards, and contingency plans in the event progress is not forthcoming or falls behind schedule. Many statutes also require the charter school to meet performance standards established by the state.

Table 3.3

Required Contractual Provisions on the School's Educational Program

	More Autonomy --									Less Autonomy
	CO	CA	AZ	KS	MI	WI	GA	MN	MA	NM	MO
Mission Statement/Goals	✓	✓			✓			✓			
Program Description	✓	✓	✓	✓		✓	✓	✓		✓	
Pupil Performance Standards/Outcomes	✓	✓	✓	✓			✓	✓			
Curriculum	✓				✓					✓	
Pedagogy/Methods						✓					
Plan for Evaluation	✓	✓	✓	✓			✓				✓
Methods/Types of Pupil Assessment	✓	✓	✓		✓	✓	✓				
Procedures for Corrective Action	✓										
Methods of Assessing the School's Educational Performance				✓	✓						
Use of State/District Pupil Performance Standards/Outcomes	✓	✓ But	✓	✓		✓	✓	✓	✓		
Use of State Sanctioned Tests		✓ But	✓		✓				✓		

Key: ✓ = required by statute; [blank space] = not addressed in statute.

Colorado's statute covers both an explanation of the proposed program and a requirement that charter schools meet state performance standards. It requires inclusion of a "mission statement...consistent with the principles of the general assembly's [description of legislative intent]."[148] The statute also directs that the charter school application contain "[a] description of the charter school's educational program, pupil performance standards, and curriculum, which must meet or exceed any content standards adopted by the school district and must be designed to enable each pupil to achieve such standards."[149]

The statute goes on to require specific statements of the "charter school's plan for evaluating pupil performance, [and] the types of assessments that will be used to measure pupil progress towards achievement of [pupil performance] standards."[150] Moreover, the statute requires that the contract include "the procedures for taking corrective action in the event that pupil performance at the charter school falls below such standards."[151]

The Massachusetts statute leaves virtually all requirements up to the secretary of education, but does require that "[s]tudents in charter schools shall be required to meet the same performance standards, testing and portfolio requirements set by the board of education for students in other public schools."[152] Missouri's statute requires only the state commissioner of education to develop a procedure to evaluate the overall project.[153] The legislation specifies no requirement as to the content of bids submitted by management teams to local school districts.

A Description of the School's Financial and Programmatic Plans

Accountability extends to the charter school's financial and programmatic management, as well as its educational results. Approving authorities have a responsibility to the public to assure that a potential charter school organizer, handling public money and entrusted to use that money wisely on behalf of public school pupils, is capable of managing what is a complex business enterprise. School organizers should be able to: provide evidence that their proposal is economically viable, show that they have prepared a plausible budget, describe procedures for annual financial and programmatic audits that conform to accepted practice, and agree to audit standards that are comparable with those employed by the school district.

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[148] CO § 22-30.5-106 (1) (a).

[149] CO § 22-30.5-106 (1) (e).

[150] CO § 22-30.5-106 (1) (f).

[151] CO § 22-30.5-106 (1) (f).

[152] MA ch. 71, § 89.

[153] MO § 18.6.

Most statutes contain some such requirements, but they vary considerably in detail (see Table 3.4). Descriptions of the procedures for annual audits are usually required, but few statutes require applicants to provide much additional information for approving authorities to determine that a proposed school is economically viable or that the organizers have the ability to manage the school's finances.

Table 3.4

Description of the School's Financial and Programmatic Plans

	More Autonomy	-----	-----	-----	-----	-----	-----	-----	-----	-----	Less Autonomy
	CO	NM	AZ	KS	MN	CA	MA	WI	MI	GA	MO
Demonstration of the Financial Soundness of the Proposed School	✓									Does Not Apply	Does Not Apply
Proposed Budget for Contract Term	✓	✓		✓						Does Not Apply	Does Not Apply
Description of Annual Financial Audit	✓			✓	✓	✓	✓	✓		Does Not Apply	Does Not Apply
Description of Annual Programmatic/Administrative Audit	✓			✓	✓	✓	✓	✓			
Same Audit Standards as School District			✓		✓						
Submit Annual Budget to Approving Authority		✓								Does Not Apply	Does Not Apply

Key: ✓ = required by statute; [blank space] = not addressed.

The Colorado charter school statute incorporates the most comprehensive set of information requirements in this area. It directs that the charter school application include:

evidence that the plan for the charter school is economically sound for both the charter school and the school district, a proposed budget for the term of the charter, and a description of the manner in which an annual audit of the financial and administrative operations of the charter school, including any services provided by the school district, is to be conducted.[154]

Massachusetts has left most contractual requirements up to the secretary of education. However, the statute does require charter schools to provide an annual report containing a "discussion of progress made toward the achievement of goals set forth in the charter" and "a financial statement setting forth by appropriate categories, the revenue and expenditures for the years just ended."[155] The form of this report is within the secretary's discretion.[156]

Under the charter school statutes of Georgia and Missouri, financial management remains with the approving authorities, obviating the need for financial audits at the school itself. However, neither state statute requires the charter school applicant to describe an annual programmatic audit, which goes more to progress on the educational plan than finances.

A Description of the School's Self-Governance

Accountability also extends to oversight of decisionmaking processes within the charter school. Approving authorities have an interest in knowing that the procedures by which important decisions are made by charter school operators affecting public monies and public school students are both effective and fair. Requiring charter school organizers to explain their form of self-government to the approving authority prior to the grant of a charter establishes a basis for determining a group's political and/or managerial competence, and provides a benchmark for subsequent oversight of the school's decisionmaking process. Of key importance are descriptions of how decisions are to be made and who is to be involved in making them.

Perhaps the most efficient approach to meeting these needs for accountability is to require the school to be organized under some state law covering the governance of business or non-profit entities. This body of statutes and case law provides approving authorities with a clear set of expectations of decisionmaking processes and the allocation of decisionmaking power, and establishes a ready benchmark for determining subsequent compliance.[157] A somewhat less efficient approach is to specify the form of government in a provision of the charter school statute itself. Like the first option, this approach reduces the burden on the approving authority to develop appropriate and workable forms of self-government, but such provisions cannot offer the extensive body of guidance contained in other laws. This lack of predictability is inherently less supportive of accountability, because the benchmark necessary to assure compliance is itself uncertain.

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[154] CO § 22-30.5-106 (1) (g).

[155] MA ch. 71, § 89.

[156] MA ch. 71, § 89.

In theory, leaving the determination of acceptable forms of self-government entirely to the discretion of the approving authority provides greater control over the organization of the charter school entity. But the option assumes the approving authority will be able to develop as comprehensive a scheme of self-governance as that contained in the state corporations act. This places a substantial burden on the approving authority to develop expertise in a subject that is arguably outside its special competence (education policy), and raises the possibility that the approved charter will inadvertently ignore certain areas of school governance. Again, the lack of a predictable benchmark threatens accountability.

A final approach is to require the charter school applicant to describe the proposed form of self-government, perhaps including specific references to the role of key stakeholders such as teachers and parents. This method shifts the burden of describing how decisions will be made and who will make them to the applicant, but nevertheless requires the approving authority to develop some standards as to appropriate forms of charter school organization. And like the previous approach, it would seem more likely to result in a less than complete treatment of self-governance in the approved charter.

In many statutes accountability is supported by provisions requiring some explanation of the system by which important decisions will be made in the charter school, but most statutes are rather vague with regard to self-governance (see Table 3.5).

Michigan and Minnesota require that their charter schools be organized under state law governing the structure of corporate entities, the terms of which are defined by state law. Minnesota allows the choice of organizing as a non-profit corporation or as a cooperative. Michigan's legislation requires that the application contain the school's proposed articles of incorporation and bylaws, including the school's "governance structure."[158] These must be consistent with state statutes governing non-profit corporations, and include governance by a board of directors.[159] As noted above, under the Michigan statute, the approving authority determines the number of board members, how they will be selected, and the length of their term.[160] The statute also requires that the ultimate contract describe the school's "specific operating requirements [including] at least all of the matters set forth in the application for the contract."[161]

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[157] This approach does not compromise the charter school applicant's ability to devise unique governance structures. State corporations and non-profit corporations statutes permit deviations from standard governance provisions that otherwise apply by default. But reliance on such law provides a relatively predictable governance structure that charter school operators may find reassuring.

[158] MI § 502 (3) (c), (d).

Table 3.5

The School's Method of Self-Governance

	More Autonomy										Less Autonomy
	MI	MN	MA	MO	KS	CO	CA	WI	AZ	GA	NM
School Organized under Nonprofit or Business Corporations Statute	✓	✓									
School's Management Structure Specified by Charter School Statute	Implied	✓	✓	✓							
School's Management Structure Specified by Approving Authority	✓				✓						
School's Management Structure Described in Contract	✓		✓		✓	✓	✓	✓	✓	Implied	
Description of ... Parental Involvement in School Decision Making in Contract						✓	✓	✓		✓	
Teacher Involvement						✓				✓	
Community Involvement						✓				✓	

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[159] MI § 502 (1).

[160] MI § 503 (3).

[161] MI § 503 (4) (d).

Key: ✓ = required in statute; [blank space] = not addressed.

A Description of the School's Admissions Policies

Several states require charter school applicants to explain how the school will be governed, although the specific content of that explanation is unclear, particularly with respect to rules of decision. The Kansas statute is typical of this approach, requiring only that charter school petitions include a description of "the governance structure of the school, including the means of ensuring accountability to the [local] board of education."[162] That structure must be approved by the local and state boards of education, but it need not follow a particular pattern, nor is it required to cover particular decisions.[163]

Georgia is even less demanding in its requirement that applicants explain decision processes. It requires that the charter school petition include descriptions of how the faculty, instructional staff, and parents will be involved in the development, implementation, and evaluation of the proposed educational program.[164] This implies that some description of the school's governance structure will be contained in the contract.

Charter school accountability is advanced by the establishment of clear standards to determine compliance with the statute. In keeping with this theme, a description of admissions policy in the charter school application is important to accountability. Although discrimination on the basis of race, national origin, ethnicity, and religion are prohibited by law, a wide variety of other grounds for discrimination in admissions exist.[165] Unless a charter petition is clear on the criteria that the school proposes to use, approving authorities may find they have approved a school using admissions policies that are legal but contrary to the authority's public policy judgments. By setting a clear standard of review, statutes that require charter schools to be open to any student living in the district are the most supportive of accountability. Other formulations are subject to interpretation and thus constitute ambiguous benchmarks. For instance, those statutes that contemplate the establishment of charter schools by conversion leave the individual charter schools with the same admissions policy as the district. This is less supportive of accountability than the previous approach because the range of permissible forms of discrimination in the district may be untested, and forms of discrimination that turn out to be permissible might be considered contrary to the local school board's perception of public policy. Similar problems are conceivable where statutes only require that charter schools comply with anti-discrimination laws. Where statutes allow schools to describe their proposed admissions policy a burden is placed on the approving authority to predict the outcome of the policy in potential future disputes. This ambiguous benchmark undermines accountability.

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[162] KS § 4 (c) (5).

[163] KS § 4 (e), (f)

[164] GA § 20-2-255 (c) (6), (7)

[165] See Table 2.4 for a detailed list of statutory restrictions on charter school's admissions policies

Most statutes at least require charter school organizers to describe their proposed admissions criteria in their application (see Table 3.6). Colorado offers organizers no leeway on admissions policies. Under its statute, admission "must be open to any child who resides within the school district."[166] This unambiguous standard offers a clear guide to those responsible for monitoring compliance with state regulation under the charter school statute.

Table 3.6

Charter School Admissions Policies

More Autonomy ----------			---------- Less Autonomy
"Open to Any Child Who Resides in the School District"	Conversion Only - No Change in Policy	Compliance With Restrictions in Charter School Statute - No Description Required	Description of Policy Required - Approving Authority Must Authorize
CO	GA NM MO	AZ	MA CA MN WI MI KS

The legislation passed by Georgia, Missouri, and New Mexico contemplates only conversion of existing schools to charter status, with pupils drawn from the same community before and after conversion, and the school itself remaining a part of the school district. Consequently, the school's admissions policies remain unchanged and like those of the district to which the school belongs.

California, Kansas, Massachusetts, Minnesota, Wisconsin, and Michigan allow for conversion as well as the formation of new schools, but contemplate the existence of alternatives for students who choose not to attend a charter school. These states require applicants to explain their approach to admissions. For example, Minnesota charter school contracts must contain the school's "admissions policies and procedures."[167] Kansas requires the charter school to specify "criteria for admission of pupils."[168] In these cases, the approving authority must authorize proposed admissions policies as part of the charter or contract under which the school will operate.

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[166] CO § 22-30.5-104(3).

A Description of the School's Disciplinary Policies

In many cases, public schools and public school districts may refuse to enroll a student expelled from any other public school.[169] However, the right of an enrolled student to public primary and secondary education offered by the state is an entitlement protected by the Constitution.[170] Consequently, a student cannot be deprived of the right to public schooling without due process of law.[171] As public schools, charter schools must honor this constitutional requirement, regardless of whether it is included in the state's charter school statute.

A charter school's approach to student discipline affects the protection of student rights guaranteed by the Constitution. Most charter school statutes do address disciplinary procedures (see Table 3.7). Several establish a relatively clear benchmark for determining accountability by implicitly or explicitly requiring the charter school to follow district policy. Many others require the school to describe its policies and allow the approving authority to determine whether they are acceptable. Only one statute is silent on the issue.

Table 3.7

Student Discipline Procedures

More Autonomy ----------	--	---------- Less Autonomy
Same as District	Description Required	Description Not Required

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[167] MN § 120.064, Subd. 5 (3)

[168] KS § 4 (c) (8)

[169] See Wash. Admin Code § 180-40-275, as contained in that state's *Common School Manual* (1995) prepared by the Superintendent of Public Instruction.

[170] *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed. 2d 725 (1975).

[171] *Id.* See generally, H.C. Hudgins, Jr. and Richard S. Vacca, *Law and Education: Contemporary Issues and Court Decisions* (3d. ed.) § 10.3 (1991).

GA	KS	MI
MO	MN	
NM	CA	
CO (Negotiable)-->	WI	
	MA	
	AZ--->	

The charter school statutes of Missouri, New Mexico, and Georgia contemplate a process allowing the conversion of existing schools to charter school status in which the pre-existing student body remains at the school and the school itself remains a part of the school district under the jurisdiction of district authorities. In these cases, the charter school remains subject to the disciplinary mechanism designed by the district. Consequently, there is no need for these statutes to mention a charter school's proposed disciplinary policies and procedures.

Where charter schools are independent of the district, and in particular where charter school legislation grants a blanket waiver from district rules and regulations, the principle of accountability suggests a need for the applicant to specify the school's proposed process for student suspension and expulsion. Massachusetts, California, Kansas, Minnesota, and Wisconsin require such provisions. The Kansas and Minnesota statutes are the most specific. Kansas requires the charter school petition to describe "pupil suspension and expulsion policies, to the extent there is deviation from district wide policies."[172] Minnesota requires the school contract to contain an explanation of how the school will comply with the state's pupil fair dismissal act.[173]

Colorado and Michigan make no specific mention of any requirement that charter school applicants explain their proposed procedure for student discipline. The Colorado statute requires the applicant to bargain with the local board of education for exemptions to district regulations, and requires the school and local board to jointly request that the state board approve releases from state policies.[174] This implies that unless released from local and state disciplinary procedures by negotiation, the charter school shall remain subject to those procedures. To the extent that a charter school is exempted from existing disciplinary regulations, the statute requires the "contract to reflect all agreements regarding release of the charter school from school district policies."[175]

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[172] KS § 4 (c) (10).

[173] MN § 120.064, Subd. 5 (6), Subd. 8 (g).

[174] CO § 22-30.5-105 (2), (3).

Description of the School's Legal Liability and Insurance Coverage

Charter school legislation frequently gives individual schools a legal status independent of the school district, a quasi-private corporate form, and freedom from district and state rules and regulations. Charter schools' educational programs are often based on innovative approaches to education. For example, they may consider the larger community beyond the school building to be the classroom, which may involve students attending frequent field trips, the use of community leaders as student mentors, the employment of non-certified personnel as teachers, and student internships at public and private institutions. The unique and distinct status and role of charter schools within the public school system suggests a set of legal obligations and vulnerabilities independent of and different from the district as a whole. To the extent that this is true, the objective of accountability implies that the nature and extent of a charter school's legal liability, the allocation of legal responsibility between the approving authority and the charter school, and the types and extent of the school's insurance coverage be specified before a charter is granted.

Statutory provisions in the area of liability and insurance vary (see Table 3.8). Some require the school to mimic the district. Others require charter school applicants to describe their approach to the approving authority in the application or petition. Many statutes contain no requirement.

Table 3.8

Legal Liability and Insurance Coverage

More Autonomy --	--	-- Less Autonomy
Same as District	Description Required	Description Not Required
GA MO NM	CO WI MN AZ--->	MI MA CA KS

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[175] CO § 22-30.5-105(3).

Description of the School's Health and Safety Policies

Related to liability and insurance is the issue of how a charter school will protect the health and safety of students and employees. Again the statutes are divided between those that require a charter school to follow district policy, those that require a charter school applicant to describe the proposed policy in the application, and those that contain no requirement (see Table 3.9).

Table 3.9

Health and Safety Policies

More Autonomy -- Less Autonomy

Same as District	Description Required	Description Not Required
GA MO NM	CA KS WI <---MA <---CO (Negotiable) <---MI AZ--->	MN

THE MONITORING OF A CHARTER SCHOOL'S ONGOING OPERATIONS

Before a charter school is established, its organizers are accountable in the sense that they have an obligation to convince approving authorities that their plans hold the promise of educational success, further public values, and are worthy of support. If they are not convincing, their application will not be approved.

Once a charter school has been approved, the focus of accountability shifts from judgments about the promise of a charter school proposal to the performance of the operational school. Charter school organizers must be able to achieve the objectives they sold to the approving authority and must be able to prove they achieved those objectives to the satisfaction of the approving authority. In the charter school statutes, these needs are addressed in two types of provisions: those requiring the school to submit to regular audits and provide regular reports to state authorities and the public; and those obliging state education authorities to monitor the charter schools and the charter school program.

Reporting Requirements for Individual Schools

Accountability is made possible, or at least easier, if schools are required to report periodically on their activities. Reports constitute one approach to determining whether schools are meeting their contractual obligations. Ideally, the programmatic and financial audits in these reports will be conducted annually and performed by independent, or at least state, authorities rather than by the school itself. The reports should be available to the public and submitted at least to the school's parents, donors, and teachers, and to the local and state education authorities.

The requirement for reports provides these groups and particularly approving authorities, as well as the community at large, with an important source of information on which to base decisions to continue their support for each charter school. The requirement also promotes responsible operation of the charter school, as school managers must realize that their decisions and actions, or at least the results, will be the subject of a report to their constituents and overseers. Cumulatively, these reports form one source of information for legislative decisions about the future of the overall charter school program.

Most charter school statutes require some form of report from each charter school (see Table 3.10). In most cases, the requirement for an annual report is explicitly stated in the charter school legislation or is implied by audit requirements. Generally, schools are required to report on both their educational program and their financial status. Often state authorities have the right to conduct the underlying audits. The reports are usually considered public information and in several cases schools are required to provide them to the parents of students attending the school, as well as the school's approving authority. In some cases, the statute requires that the report be issued by a specific date.

The Massachusetts charter school statute explicitly requires an annual financial and programmatic report. The statute describes the requirement in detail:

> Each charter school shall submit to the secretary [of education], to each parent or guardian of its enrolled students, and to each parent or guardian contemplating enrollment in that charter school an annual report. The annual report shall be issued no later than August first of each year for the preceding school year. The annual report shall be in such form as may be prescribed by the secretary of education and shall include at least the following comments:

(a) discussion of progress made toward achievement of the goals set forth in the charter;

(b) a financial statement setting forth by appropriate categories, the revenue and expenditures for the year just ended.[176]

Table 3.10

Reporting Requirements for Individual Schools

	More Autonomy									Less Autonomy
	MA	GA	MN	CA	WI	KS	CO	MI	AZ	MO	NM
Financial Report	Annual	Does Not Apply	Annual	Annual Implied	Annual Implied	Annual Implied	Annual Implied and to Renew				
Programmatic Report	Annual	Annual	Annual	Annual Implied	Annual Implied	Annual Implied	Annual Implied and to Renew				
Report to... Parents	✓	✓									
Local Board		✓	Maybe	Implied	Implied	Implied	Annual Implied Req'd to Renew				
Community		✓									
State Education Agency	✓	✓	✓								
Approving Authority/State May Audit School		Implied	✓			Implied		✓	✓	Implied	Implied

Key: ✓ = required by statute; [blank space] = not addressed; [other wording] = self explanatory.

California, Wisconsin, and Kansas impliedly require annual reports on the condition of a charter school's program and finances. All three require that charter school petitions contain a description of the manner in which annual audits of the financial and programmatic operations of the school is to be conducted."[177] Presumably, the results of these audits will be contained in a report. The statute is silent as to the recipients of the audit information, and hence says nothing about the recipient of the reports. Presumably, the report will go to the approving authority. The Missouri, Michigan, and New Mexico statutes contain no reporting requirements on the part of the individual school.

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[176] MA ch. 71, § 89.

Few state statutes explicitly require or allow the financial and programmatic audits underlying these reports to be carried out by independent or state authorities. Minnesota specifically grants such audit authority to state bodies. "The department of education, state auditor, or legislative auditor may conduct financial, program or compliance audits."[178]

Such authority is implicit in the Missouri statute's requirement that the commissioner of education develop procedures for evaluating schools.[179] Similarly, Michigan specifically makes the approving authority responsible to "oversee...compliance with the contract and all applicable law."[180] The Kansas statute also impliedly gives such authority to the local board of education with the requirement that the district annually evaluate charter school operations for the state board of education.[181]

Given that charter schools in Georgia and New Mexico remain part of the local school system, auditing authority would appear to remain with the district.

Frequency and Content of State Agency Reports on the Charter School Program

The studies and reports required of state agencies are intended to address the general effectiveness of charter school legislation, more than the performance of individual charter schools. Nevertheless, the requirement for review of the entire charter school program supports the goal of accountability by allowing comparisons of the results of various educational strategies taken by charter schools and of charter schools with other public and private schools. The most effective means of assuring this part of accountability would be to establish clear criteria for the review of the charter school program and to require regular reports by state authorities (see Table 3.11).

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[177] CA § 47605 (b) (9); KS § 4 (c) (9); WI § 118.40 (1m) (b) (11).

[178] MN § 120.064, Subd. 8 (h).

[179] MO § 18.6.

[180] MI § 507.

[181] KS § 8 (b).

Colorado follows this approach. Under its statute, both the State Department of Education and the State Board of Education are required to issue reports. The State Department of Education is required to "prepare an annual report and evaluation for the governor and the [legislature] on the success or failure of the charter schools, their relationship to other school reform efforts, and suggested changes in state law necessary to strengthen or change the charter school program."[182] The State Board of Education is required to report to the legislature on the overall program by January 1, 1997.[183] The Colorado State Board must compile the local board's evaluations of charter schools and "review information regarding the regulations and policies from which charter schools were released (under the act) to determine if the releases assisted or impeded the charter schools in meeting their stated goals and objectives."[184] In addition, the board must "compare the performance of charter school pupils with the performance of ethnically and economically comparable groups of pupils in other public schools who are enrolled in academically comparable courses."[185]

Table 3.11

State Agency Reports to the Legislature on the Overall Charter School Program

	More Autonomy --- Less Autonomy											
	CO	GA	KS	CO	WI	CA	MA	MO	MI	MN	AZ	NM
Reporting Requirement	Annual	Annual	Annual	1997	2000	1999	1998	2000				
Agency Reporting	State Dept. of Educ.	State Board of Educ.	State Board of Educ.	State Board of Educ.	Legis. Audit Bureau	State Dept. of Educ.	State Legis.	State Com. of Educ.			State Board for Charter Schools	
Determine... Effect of Waivers			Implied	✓								
Educational Performance	Implied		Implied	✓	✓	✓						
Financial Performance	Implied				✓							
Relationship to Other Reform Efforts	✓											

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[182] CO § 22-30.5-112(5).

[183] CO § 22-30.5-113(2).

[184] CO § 22-30.5-113(1).

[185] CO § 22-30.5-113(3).

Suggest Changes to Statute	✓					✓	✓	Implied			✓	

Key: ✓ = required by statute; [blank space] = not addressed; [other wording] = self explanatory.

Georgia, California, Massachusetts, and Missouri require state education authorities to report on the charter school program, but the nature of the reporting requirement is vague. For example, Georgia's State Board of Education is required to report to the legislature "each year on the status of the charter school program."[186]

The New Mexico, Minnesota, and Michigan statutes provide no termination date and do not require any report to the legislature on the program. They all provide for accountability by the individual school by requiring periodic renewal of the charter, and all but New Mexico contemplate the possibility of revocation.

THE POSSIBILITY OF CHARTER REVOCATION AND RENEWAL

Effective accountability requires an efficient means of terminating schools that fail to achieve their contractual requirements, particularly in the area of educational outcomes. This implies that contracts or charters be revocable, or made subject to renewal (if set for a definite period), and that there are clear and objective criteria for the revocation or renewal of a charter.

Most statutes cover these aspects of accountability in some detail. Only New Mexico's legislation is virtually silent on these issues. The Massachusetts statute contains few specifics in these areas, leaving the establishment of "procedures and guidelines for revocation and renewal" to the secretary of education.[187]

Duration of the Charter

As discussed in the section on autonomy, only Michigan allows for a charter of indefinite duration (see Table 3.12). This does deprive the approving authority of statutorily scheduled opportunities to reconsider the charter school experiment, but it does not deny it the right to schedule such reviews and is not necessarily contrary to the goal of accountability. If the charter school statute provides for ongoing review of the charter school's educational program and financial condition, and establishes a process for charter termination if contractual standards and other criteria are not met, accountability need not be jeopardized. Michigan includes these provisions in its statute. It makes the approving authority responsible for ongoing oversight of the charter school,[188] and requires that every contract contain a description of the procedure and grounds for revocation.[189]

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[186] GA § 20-2-255(i).

[187] MA ch. 71, § 89.

Most statutes establish a maximum duration for a charter school contract of three or five years, with the possibility of renewal. California, Colorado, Massachusetts, New Mexico, and Wisconsin establish a five year maximum for the initial contract.[190] Kansas provides for a three year charter.[191] Georgia and Minnesota provide for a duration of not more than three years.[192] These states provide for a renewal period equal to that of the original contract.[193]

The Missouri statute implies a contractual period of five years, but does not explicitly preclude a shorter period.[194] The entire pilot program is set to last only five years, and the statute does not discuss the possibility of renewal.[195]

Table 3.12

Duration of Initial Contract

More Autonomy ----------	----------	----------	----------	---------- Less Autonomy
Three-Year Maximum	Three Years	Five-Year Maximum	Five Years	No Maximum
GA MN	KS	CA CO MA MO NM WI	AZ*	MI

Key: * = Renewal for Seven Years

Criteria for Revocation and Renewal

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[188] MI § 507.

[189] MI § 503 (4) (f).

[190] CA § 47607 (a); CO § 22-30.5-110 (1); MA ch. 71, § 89; NM § 22-8A-4 (B); WI § 118.40 (3) (B).

[191] KS § 5 (a).

[192] GA § 20-2-255 (b) (1); MN § 120.064, Subd. 5 (9).

[193] CA § 47607 (a), CO § 22-30.5-110 (1); MA ch. 71, § 89; NM § 22-8A-4 (B); WI § 118.40 (3) (B); GA § 20-2-255 (b) (1); MN § 120.064, Subd. 5 (9).

[194] MO §§ 18.1, 18.4.

[195] MO § 18.1.

Objective criteria for revocation and renewal are vital to the goal of accountability. The statutes are reasonably consistent in their general statement of the grounds for revoking or deciding not to renew a charter school contract. These typically include: violation of the contract, failure to achieve specified educational outcomes, failure to meet generally accepted standards of fiscal management, and violations of laws the school was not specifically exempted from (see Table 3.13).

Every statute, except those of New Mexico and Missouri, provides some means of terminating a charter school contract on the general grounds that the school violated the contract.[196] For example, California and Colorado allow the school district to revoke or decide against renewal for "material violations of conditions, standards or procedures" in their application.[197] New Mexico permits renewal on the same basis as the initial application, but provides no specific conditions under which the state board must renew a charter.[198] Missouri's legislation contemplates neither revocation nor renewal. Missouri's statute does not explicitly contemplate renewal.

Table 3.13

Criteria for Revocation/Non-Renewal of a School's Contract

	More Autonomy -- Less Autonomy										
	CO	CA	MI	KS	WI	MN	AZ	MA	GA	NM	MO
Violation of the Contract or Charter School Statute	✓	✓	✓	✓	✓		✓	✓	✓		
Failure to Achieve Specified Educational Outcomes	✓	✓	✓	✓	✓	✓	Implied				
Failure to Meet Generally Accepted Standards of Fiscal Management	✓	✓	✓	Implied	✓	✓	Implied				
Violations of Law	✓	✓	✓	✓		✓					

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[196] NM § 22-8A-5 (B)

[197] CA § 47607 (b) (1); CA § 22-30.5-110 (3) (a)

[198] NM § 22-8A-4 (B0

"Good Cause"						✓					
"Best Interest" of District Pupils	✓										

Key: ✓ = required by statute; [blank space] = not addressed.

The statutes often specifically allow revocation or non-renewal if the school does not achieve the educational outcomes contained in the contract. California allows revocation where the school has "[f]ailed to meet or pursue any of the pupil outcomes identified in the charter petition."[199] Colorado permits it when the school has "[f]ailed to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter application."[200] New Mexico, Georgia, Massachusetts, and Missouri do not mention of this possibility.

Most legislation specifically authorizes revocation if, in the terms of the California, Colorado, Wisconsin, and Minnesota statutes, the school fails to meet "generally accepted accounting standards of fiscal management."[201] Under the New Mexico, Missouri, and Georgia legislation, financial management remains largely with the school district, so accounting standards are not relevant.

A violation of the law is also generally considered grounds for terminating or refusing to renew a charter school contract. California allows revocation or non-renewal if the approving authority finds that the charter school "[v]iolated any provision of the law."[202] The statutes of Colorado,[203] Minnesota,[204] and Michigan[205] contain similar provisions. Georgia, Massachusetts, Missouri, Wisconsin, and New Mexico have no such provision in their charter school statutes.

Colorado and Minnesota also allow revocation and non-renewal on less specific grounds. Colorado's statute enables a local school board to decide against renewal if it "is not in the interest of the pupils residing within the school district."[206] In addition to the grounds for revocation and non-renewal discussed above, Minnesota allows these decisions on the more general basis of "other good cause shown."[207] The scope of "best interests" and "good cause" under the Colorado and Minnesota statutes has yet to be tested, but an expansive definition would give approving authorities a powerful means of enforcing compliance with the charter school statute.

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[199] CA § 47607 (b) (2)

[200] CO § 22-30.5-110 (3) (b).

[201] CA § 47607 (b) (3); CO 22-30.5-110 (3) (c). WI § 118.40 (5) (c). MN § 120.064. Subd. 21 (b) (2).

[202] CA § 47607 (b) (4).

[203] CO § 22-30.5-110 (3) (d).

[204] MN § 120.064, Subd. 21 (b) (3).

[205] MI § 507 (b)

[206] CO § 22-30.5-110(4).

[207] MN § 120.064, Subd. 21 (b) (4).

SUMMARY ASSESSMENT

No state statute wins out over the others in its overall demand that individual charter schools to be accountable to public authorities. However, in some of the most important areas of accountability, Colorado's legislation clearly takes the lead.

The Process of Becoming a Charter School

Georgia's charter school legislation, which contemplates the conversion of existing schools to charter status, imposes a high standard of accountability on charter school organizers from the start. It demands the highest degree of overall community support for a charter school; over 66 percent of the schools teachers, over 66 percent of the parents of pupils at the school, and the local school board (charters are approved by the state board of education). In the case of conversion, Minnesota requires the highest degree of teacher support—90 percent—but establishes no required level of parental support (the local board is the lowest level approving authority). Of the statutes allowing the formation of entirely new schools, California and Wisconsin demand the highest levels of support—10 percent—of the teachers in the district.

In the critical area of representation regarding a proposed charter school's educational program, Colorado's statute is far and away the most demanding. It requires the most complete description of a proposed charter school's educational program. Charter school applications must include a mission statement consistent with the statute's section on legislative intent. It must contain a description of the proposed educational program, pupil performance standards, and curriculum. These must at least meet content standards established by the school district or the state. The school's program must be designed so that it can be met by every student. The applicant must describe the plan for student evaluation, the types of assessments that will be used, and plans for corrective action if school performance drops below the proposed standards.

In the area of educational accountability, Massachusetts and Michigan are superior to Colorado in only one respect. They explicitly require that the charter school employ state sanctioned tests to measure school performance, which allows state education officials to compare the results of education at a charter school with the larger state school system.

Colorado also imposes the greatest degree of accountability on charter schools in the area of budgeting during the application process. Like most statutes, Colorado's requires applicants to describe how annual financial and programmatic audits will be carried out. But the statute also requires applicants to demonstrate that their plan is financially sound and provide a proposed budget for the term of the proposed contract. Minnesota is superior in the small respect that it explicitly requires charter schools to maintain the same audit standards as a school district.

The Michigan statute probably provides for the highest degree of accountability with respect to an applicant's description of the charter school's method of self-governance. Michigan schools must be formed under the state non-profit corporations statute and be governed by a board of directors. The statute requires that the application contain the proposed school's charter and by-laws. The approving authority determines the number of board members, how they will be selected and the length of their terms. The contract must include provisions covering each of these matters.

By stating that charter schools must be open to any student who resides in the school district, the Colorado statute sets an unambiguous standard of accountability for charter school applicants in the area of admissions. Applicants have nothing to describe in their applications, they must meet the statutory requirement. Similarly, state statutes that contemplate the conversion of existing district schools to charter status, often requiring the school to remain under the supervision of the local school district, appear to assume that the district admission requirements will remain in force.

With regard to descriptions of disciplinary, liability and insurance, and health and safety policies, states that contemplate conversion within the school district framework (Georgia, Missouri, and New Mexico) in essence require that the charter school remain subject to the district's existing policies. There is no description of such policies in the charter school application.

Where they assume that charter schools will be independent legal entities, state statutes differ in their requirement that the applicant explain proposed policies in the application. Minnesota's contains the most specific discussion of disciplinary procedures, requiring applicants to explain how they will comply with the state statute governing pupil dismissal. In the area of liability and insurance coverage, Colorado's is probably the most demanding in terms of accountability, requiring that the application contain an agreement between the school and the district on respective liability and applicable insurance coverage. With regard to health and safety, the California and Wisconsin statutes place the greatest accountability demands on school applicants by requiring them to incorporate provisions explaining procedures to assure student health and safety into their petitions. Massachusetts establishes the less specific, but broadly reaching requirement that charter schools comply with all applicable state and federal laws and regulations.

Monitoring Charter School Operations

The Massachusetts legislation provides the most comprehensive annual reporting requirement on charter schools. It requires an audit of a school's financial and programmatic operations during the previous year. At a minimum, the report must discuss the progress made in achieving contractual obligations and contain a financial statement of school revenues and expenditures, broken into appropriate categories. This report must be issued by August for the preceding year, and distributed to parents who contemplate enrolling their children in the school, as well as to the parents of students already enrolled in the school, and to the secretary of education.

The Minnesota statute contains many of these same requirements, but also expressly permits state officials to conduct independent audits of the school. Georgia's legislation does not grant its charter schools financial independence from the local school board and therefore does not require financial reports, but does require an annual programmatic report which must be distributed to parents, the local board, and state education authorities, and made available to the community at large.

Colorado's charter school legislation includes the most comprehensive assessment of charter schools by state education authorities. The statute requires an annual report by the state department of education to the governor and the legislature evaluating the success or failure of charter schools in the state, and suggesting changes to state law to strengthen or change the charter school program. The state board of education is required to provide the legislature with a report by 1997, evaluating the overall program and specifically the effect of waivers on school performance.

Revocation and Renewal

The Georgia and Minnesota statutes provide the most frequent opportunities for approving authorities to exercise their right to hold charter schools accountable for educational performance and other obligations. They establish a maximum term of three years before a charter school contract comes up for renewal.

With respect to the criteria applied by approving authorities faced with a decision to renew or revoke a contract, Colorado offers the widest scope for exercising the right to hold a school accountable. Like most state statutes, Colorado's permits a charter to be revoked or not renewed for material violations of the contract, a failure to make reasonable progress towards educational outcomes specified in the contract, a failure to meet generally accepted standards of financial accounting, or violation of the law. But Colorado also allows approving authorities to terminate a contract or decide against renewal on the broader standard of the best interests of pupils residing in the school district as a whole.

IV. AUTONOMY, ACCOUNTABILITY, AND PUBLIC VALUES

In the abstract, autonomy and accountability are concepts in opposition. Complete autonomy suggests complete freedom. Complete freedom implies accountability to no one. Complete accountability suggests subservience, which implies that the accountable party lacks independent decision making authority.

In real-life settings, autonomy and accountability exist side by side, in some sort of balance. For example, it is commonplace in managerial circles to discuss the need to "combine responsibility with authority." The idea is that a manager made responsible to achieve particular results should be given the authority to take the actions required to get the job done. The scope of the manager's autonomy is defined by the result he or she is accountable for and the means necessary to achieve the result. The scope of autonomy is also affected by competing values held by those who delegate authority and responsibility to the manager, which lead them to impose constraints on the manager's discretion.

As suggested by the following formulation, the charter school concept is based on some sense of a need to balance the autonomy of individual schools—that is their control over decisions essential to the success of their educational program, and their accountability to approving authorities—for student performance and compliance with the terms of their charter, tempered by constraints imposed on the school by larger values concerning public schools.

> [People] at the school site must have the power to make critical decisions about such issues as budgets and personnel. They should be held accountable for results specified in a written contract.
>
> Moreover, charter schools should be exempt from virtually all rules and regulations, except those that prohibit discrimination.[208]

It is possible to devise charter school statutes that emphasize accountability to the point where the school lacks effective control of its educational program. It is also possible to grant the charter school so much freedom that it cannot be held accountable for its operation. Conflicts between the autonomy and accountability aspects of charter school statutes have been briefly noted in prior sections. Every statute handles these tensions differently, in some cases erring on the side of accountability, in others favoring autonomy. Charter school autonomy is compromised to the extent that statutes allow approving authorities to deny charters at their discretion, although the exercise of such discretion clearly makes the schools highly responsive (i.e., "accountable" to approving authorities). Charter school accountability is compromised to the extent that statutes fail to define clear standards of school performance in the area of educational outcomes, although the lack of such standards clearly expands the scope of a charter school's freedom from outside interference (i.e., its autonomy). Charter school legislation should create a workable mix of accountability and autonomy that encourages the development of a more effective public school system.

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[208] Lynn Olson, "Varied Laws Raise a Question: What Is a Charter School?," *Education Week* 14, January 19, 1994 (reporting on efforts by charter school organizers to develop a common definition).

This section explores tensions between the autonomy and accountability sides of the basic bargain embodied in the charter school statutes examined in this report. It also reviews conflicts between autonomy and the values of public education reflected in federal and state constitutional law. The objective is not only to describe these conflicts, but also to suggest how workable balances between these competing objectives might be embodied in the provisions of charter school statutes. Together with the results of Sections 3 and 4, the discussion in this section will provide the basis for a description in Section 5 of a model charter school statute.

A METHODOLOGY FOR ANALYZING THE PROVISIONS OF CHARTER SCHOOL STATUTES

The provisions in charter school statutes represent the result of each legislature's efforts to balance the objective of fostering the autonomous administration of the individual charter school with the need to hold the school accountable for its performance and its fidelity to the values of public education. The nature of this balance differs by statute. It is determined by the legislature's sense of how much autonomy is necessary for the charter school to improve educational outcomes and how the legislature characterizes the values of public education. States with a "weak" basic bargain have decided that less autonomy is necessary than those with a "strong" bargain, but all tend to err on the side of control, perhaps because the mechanisms of accountability are not well-developed. To a lesser extent, states are reluctant to push the charter school concept into areas that disrupt the institutions of mainstream public education because they confuse those institutions with the underlying values of the public education system.

AUTONOMY AND ACCOUNTABILITY

The problem of balancing autonomy and accountability involves a reconciliation of two coequal values at the heart of the charter school concept. On one hand is the belief that schools should be accountable to the public for results—expressed in terms of student performance—and for operating within the law. On the other, is the position that decisions about how to achieve those results and how to administer the school within legal bounds should be made at the school itself. The two values come into conflict in key areas of charter school legislation: the approval process, the duration of the charter school contract, school financing, performance standards, and self-governance. An effort will be made below to describe and resolve or mitigate the tension between competing values in each of these areas.

Underlying the proposed resolutions of these conflicts is an assessment that the best method for arriving at the correct balance between these coequal values in any provision of a charter school statute is to judge each value (as reflected in the provision) in terms of its effect on the other value. Thus, in an ideal world, no provision to promote school autonomy should be allowed to undermine accountability for student performance; and aside from promoting accountability for results (and adherence to state laws governing health and safety, discrimination, and the use of public monies), no provision should be allowed to impinge on school autonomy. Given this formulation, the critical issue is how much autonomy is necessary to improve performance.

An answer to this question assumes that valid and reliable measures of student and, hence, school performance are readily available, an assumption many would question. Any existing charter school statute represents the legislature's best guess as to the proper balance between autonomy and accountability. In this respect, implementation of the range of strong and weak bargains codified into law constitute yet another experiment undertaken by the states as social laboratories. From these experiences the nation will begin to get at an answer to the question of "how much (autonomy) is enough."

Thus far, whether the bargains are characterized as strong or weak on school autonomy, most legislatures have placed the charter school on a relatively short leash. All but those of Arizona, Massachusetts, and Michigan place the power to oversee charter schools primarily with local boards of education, but local school boards labor under a fundamental conflict of interest because they simultaneously oversee the charter school's chief competitor for public school students (i.e., the centrally-managed district schools under the board's direct control). No charter school statute in force at the time this report was written prohibits approving authorities—mostly local boards—from applying highly subjective approval criteria. The approval of charter school applications remains an essentially discretionary and arbitrary process; reinforced by the normal tendency of appellate authorities to defer to the lower bodies except where the abuse of discretion is self-evident. Aside from the Michigan statute, charter school contracts are required to be quite short—no more than five years, and are subject to arbitrary renewal criteria, again often applied by the local board. And aside from Massachusetts, charter school statutes grant local school districts substantial powers over charter school finances.

Charter school advocates and applicants may try to sensitize boards to their conflict of interest and ask them to be "fair" in their decisions. Nevertheless, these factors tend to tilt negotiations between school boards and charter school applicants over the terms of a school's charter in the board's favor. Consequently, under most statutes, a determination of the actual extent of a charter school's operational autonomy is up to the local board.

This state of affairs is likely to continue until legislatures decide that valid and reliable measures of student performance exist. Such measures are not only to permit charter school accountability but also to assure charter school autonomy, and indeed to substantiate the charter school concept. The effect of valid, reliable measures of student performance on accountability is obvious. A benchmark for comparing the performance of a charter school with any other public school is fundamental to the concept of accountability. The effect on autonomy is perhaps less apparent but equally essential, because without objective criteria for assessing school performance, legislatures will naturally tend to rely on the subjective and somewhat arbitrary standards applied by local boards that effectively limit a charter school's independence. The development of valid and reliable measures of student performance is also essential to the long term success of the charter school concept, because without them, charter school advocates have no solid basis for their claim that independent schools are a better approach to public education than the traditional system of schools centrally-directed by the district.

For the same reasons, there is a need for reliable methods of charter school self-government. Without them, important school decisions may be made on an ad hoc, arbitrary basis without considering all the relevant factors or stakeholders. Also, approving authorities are forced to approve the specific and sometimes unique proposals for decisionmaking in each proposal on the basis of subjective criteria. Here, as in the case of inadequate performance measures, the approving authority is given a means of influencing the negotiation of a proposed charter so as to limit the school's operational autonomy after charter approval. However, unlike performance measures, a considerable history and experience in the legal basis of organizational decisionmaking exists. State cooperative, non-profit, and business corporations statutes and case law provide reliable information on the administration of publicly chartered entities. Such information should be transferable to the charter school setting and easily transported into the charter school statutes.

The precise balance between autonomy and accountability in the operation of individual public schools necessary to support a consistently high level of student performance is not known. Charter school advocates imply that a great deal of autonomy is both desirable and necessary to assure improved educational outcomes.[209] Each of the charter school statutes creates a somewhat different balance between the two.

A review of charter school legislation suggests statutory provisions where actual tensions between the goals of autonomy and accountability are most likely to surface. The provisions of greatest interest include those establishing:

- the process for obtaining approval of a school charter;
- the duration of the charter;
- the use of state-mandated performance standards and tests;
- the extent of an approving authority's oversight of school finances;
- the description of a charter school's approach to self-governance; and
- the criteria for renewal and revocation of a charter school contract.

Approval of a Charter

Perhaps the most subtle influence on autonomy and accountability is contained in the statutory provisions dealing with the process of approving a charter school. On one hand, the requirement of accountability justifies the approving authority subjecting charter school applications to close scrutiny before granting a charter. One of the most significant differences between the traditional school system and the charter school concept is the latter's notion of a contractual relationship between the state and private individuals or groups to run public schools, and thus of the management of public schools by private persons. Before the state can entrust public funds and the education of its children to what, under various charter school statutes, are greater or lesser degrees of private control, it must examine the applicant's bona fides and proposals with great diligence. The need for accountability also legitimizes a process of negotiation between the school organizers and the approving authority over aspects of the proposed school's status, rights, obligations, and operations.

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[209] Charter schools ... offer a significant departure from the standard management structure of public schooling. ... District boundaries would no longer dictate where a child attends school since charter schools serve as an enrollment option for students, parents and teachers. Decentralization would be achieved by granting full control over the entire school budget as well as management and personnel decisions to school-based councils. Removal of most state and local regulations (other than those necessary to ensure safety, nondiscrimination, and high educational outcomes) would provide opportunities to be innovative and eliminate the ability to lay blame for poor achievement elsewhere. Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative*, Morrison Institute for Public Policy, School of Public Affairs, Tempe, Ariz.: Arizona State University, October 1993.

On the other hand, in most charter school statutes the scope of negotiation is quite broad and tends to favor the typical approving authorities—local boards of education, particularly where an appeals process is lacking.[210] An approving authority is not obligated to approve a proposed school contract that meets the objective requirements enumerated in the statute (under most statutes it "may" approve the contract), although it is prohibited from approving schools that do not meet them. The right of approving authorities to base the decision whether to grant a charter on subjective and perhaps even arbitrary criteria gives it enormous power over charter school applicants. This bargaining leverage may cause the applicants to yield on contractual provisions that will affect the school's operational independence—including those provisions explaining the proposed educational program.

Even where an appeals process exists, the approving authority's virtually unlimited power to decide not to grant a charter can tend to limit the charter school's autonomy. Short of a clear abuse of discretion, appellate bodies are generally reluctant to overrule the decisions of lower government bodies. Appellate authorities in the charter school application process would seem equally unwilling to "second guess" the decision of a local school board directly responsible for the oversight of the proposed charter school under review.

Accountability would be served equally well if the approving authority were obligated to grant a charter once it was satisfied that the application conformed to the statute's objective requirements. The school would have to meet these requirements to continue in operation. But the reliance on objective criteria would promote the charter school's autonomy by preserving its exclusive control over decisions essential to its continued success. Moreover, under this scheme, an appellate authority would have a more solid basis for assessing whether discretion was in fact abused by an approving authority that decided not to grant a charter.

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[210] Advocates say the major impediment to charter schools' success is the ability of the state or local board of education to impose conditions on the schools operating practices--requiring that it contract with the local district for supplies or that it hire only union teaching and support staff for example--as a condition of granting the charter.
Barbara Langdon, "Charter schools lead new course on school choice map," *The Northwest Current* (Washington, D.C.) 1, 6, January 26-February 8, 1994.

Contract Duration, Revocation, and Renewal

Most charter school statutes prohibit contracts of more than three or five years. Limiting the duration of a charter school's contract promotes accountability, requiring a charter school organizer to periodically justify its existence under circumstances when the state is under no obligation to support its continuation. By establishing a certain date when the organizer's right to run a charter school will end, unless the approving authority takes a positive action to renew the charter school contract, organizers are given a very strong incentive to meet their contractual obligations.

In practice, however, this requirement may constrain the autonomy of potential charter school organizers, particularly their actual control over decisions concerning school design. A short contract period may tend to induce caution on the part of school organizers (as well as approving authorities) and discourage the most innovative (i.e., "risky") designs. As a result, charter schools that are approved and do succeed may not depart too far from the mainstream in either their pedagogy or their overall approach to public school management.[211] Particularly when combined with circumstances in which the decision to renew is largely within the approving authority's discretion, the prospect of regular renewal negotiations creates an imbalance of bargaining power that may reduce the school's day-to-day control over its own affairs. And if charter schools do not differ significantly from the traditional schools around them, what is their justification?

The right of an approving authority to revoke a contract on the basis of subjective criteria (e.g., permitted in Colorado) creates similar problems. If a contract can be terminated despite adherence to the terms of the agreement and no violation of any other law, the school is at a disadvantage in its relationship with the approving authority. The latent threat of revocation can affect the content of the charter school's interactions with a district in ways that limit the school's real autonomy.

At first glance, a charter school contract of indefinite duration might seem antithetical to accountability. When is the holder of a perpetual charter required to justify its existence? The answer is "every day." If retention of the contract is based on the maintenance of objective student performance standards, observation of the law, and regular financial and programmatic audits, and if the termination decisions of approving authorities are subject to appellate review, the school can be held responsible for its performance without jeopardizing

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[211] And paradoxically, the more they look like traditional schools, linked to the school district in traditional ways, the less apparent the reasons to pursue nontraditional forms of organizing a school system (like that embodied in the charter school concept) will become.

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the independent authority granted to the school to take actions to meet contractual requirements.

The Use of State-Mandated Student Performance Standards

Charter school advocates fervently believe that they can improve upon the traditional school system's educational outcomes. Accountability demands some means of measuring the performance of students educated at charter schools and comparing it with the performance of students in the rest of the public school system, and perhaps even with students attending private schools. Based on this reasoning, a requirement that evaluations of charter school students be based on state-mandated educational standards measured by the results of state mandated tests is unobjectionable. Many states do require adherence to such standards and such a testing regime in the name of accountability.

However, there is a danger that state-mandated performance standards will narrow the range of acceptable schools to those that depart from the mainstream in only marginal ways. If the tests are designed in such a way that they effectively dictate what, when, and how a student must be taught in order to achieve an acceptable score, the charter school's actual autonomy in the areas of curriculum and pedagogy will be substantially limited.[212] And state standards may embody assumptions about educational requirements quite different from those of a charter school, but which are no more valid in terms of predicting students success in the real world.

One means of managing this tension between accountability and autonomy would be for the school and the approving authority to negotiate the standard and test as part of charter school contract. Until the state develops its own standards and tests, this is what the Massachusetts statute requires.[213] However, the charter school organizers would tend to suffer from the lack of negotiating leverage discussed above. In addition, a patchwork quilt of standard and testing regimes for each school would tend to undermine the state's ability to monitor the charter school program.

A better balance between autonomy and accountability would be achieved if charter school organizers were allowed to choose from an array of standards and associated tests approved by the state board of education or even by the legislature. A sufficiently—but not excessively—broad array of standards and tests would give school designers greater autonomy in determining their school's educational program (by widening the scope of potentially successful school designs) and maintain the school's accountability for student achievement. Reasonable limits on the range of standards and tests might not unduly strain the state's ability to compare the performance of charter schools with other public and private schools. This approach was adopted by Michigan, which allow charter schools to be assessed by tests developed or sanctioned by the state—the California Achievement Test, the Stanford Achievement Test, or the Iowa Test of Basic Skills.[214]

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[212] [A]ssessment, especially when it is used for decisionmaking purposes, exerts powerful influences on curriculum and instruction. It can "drive" instruction in ways that mimic not only the content, but also the format and cognitive demands of tests.
Linda Darling-Hammond, "Performance-Based Assessment and Educational Equity," 64 *Harvard Ed. R.* 5, 7-8 (citations omitted).

[213] MA ch. 71, § 89.

Local School District Oversight of Charter School Finances

Virtually every state statute requires charter schools to undergo regular financial audits that meet generally accepted accounting procedures. Charter schools spend public money and should account for their expenditures regularly, clearly, and in a form that allows for meaningful comparisons at least with other charter schools. (Given that the traditional public school is part and parcel of a school district and is tied to the district's central services and bureaucracy, direct comparisons between charter and individual district schools may not be possible.) Provision of this information to education officials and the public "after the fact" promotes accountability. The procedure enables officials to take timely action to prevent the continuation of illegal expenditures and builds a record on which approving authorities can base decisions about whether or not to terminate a charter.

Requiring charter schools to submit their proposed expenditures (i.e., their planning budgets) to an approving authority prior to approval of their charter supports the approving authority's ability to judge the economic viability of the proposed school and the financial planning skills of the applicants. On the other hand, requiring the charter school to annually submit its actual budget to a school board for approval severely undermines school autonomy. This approach to fiscal accountability promotes micro-management of the charter school's educational program by the approving authority and threatens to submit charter school managers to precisely the kinds of rules and regulations that strangle reform and that motivated passage of the charter school statutes in the first place.

Rather than requiring charter schools to submit their annual budget to a governmental body, they could be obligated to provide it to the public and the press for comment at a public meeting of the school's governing body. This exposure will promote the kind of public debate and interest on which accountability should rest, without unduly jeopardizing the charter school's ability to devise the program for which it proposes to be held accountable.

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[214] MI § 502 (3) (d) (ii).

Charter School Self-Governance

The public has a right to understand how important decisions will be made by a charter school and to be confident that such decisions will not be made by arbitrary or ad hoc processes. Before an approving authority chooses to grant a charter, it has a right to know who controls the school and who is ultimately accountable for its success or failure. Requiring that charter school proposals describe a school's decisionmaking bodies, the individuals who will make up those bodies, the decisions those bodies are entitled to make, and the vote, if any, necessary for decisions to be made, is well within bounds.

Requiring a description of self-governance promotes accountability, but specifying the contents of that description can threaten autonomy. For example, several statutes require certified teachers to constitute a majority of the charter school's decisionmaking body. This undermines autonomy, by substituting the district's control of individual schools with exclusive control by teachers. While this type of requirement may well correspond with a legislature's desire that a charter school statute be a vehicle for empowering teachers, it unnecessarily narrows the range of charter school proposals to those teachers are willing to promote. A more equal balance of autonomy and accountability is promoted when statutes require that the charter school application describe the school's form of self-governance in detail, but the statute does not specify the content of self-government.[215]

State statutes governing the formation and operation of corporate entities provide one means of balancing the requirement for a clear and comprehensive description of charter school self-governance to satisfy accountability, with the need for flexibility to promote autonomy. For example, by requiring charter schools to establish themselves under a state's non-profit corporations statute, ad hoc and arbitrary decision processes can be avoided, and clear lines of authority maintained. At the same time, the statutes are flexible enough to accommodate a wide range of members and interests. In addition, a substantial body of law exists from which to draw guidance in making subsequent decisions on the school's ongoing operations.

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[215] "State provisions (on school governance)...must involve a certain amount of trust in that certain details are left to be worked out between the school and its sponsor." Louann Bierlein and Lori Mullholland, Charter School Update: *Extension of a Viable Reform Initiative* 17, Morrison Institute for Public Policy, School of Public Affairs, Tempe, Ariz.: Arizona State University, October 1993.

AUTONOMY AND THE VALUES OF PUBLIC EDUCATION

To the extent that charter school advocates accept accountability to government agencies for purposes other than assuring educational results and financial responsibility, they tend to emphasize the need for charter schools to operate as public schools, in conformity with the values of public education embodied in the federal and state constitutions. In order to balance autonomy with the values of public education in charter school legislation, the values must first be distinguished from the means traditionally chosen by the legislature to further those values. The values must be maintained, but the means of institutionalizing those values can change.

Today's institutions of public elementary and secondary education are deeply entrenched in American public life and in our collective memory. They include schools that do not teach religion; are operated directly by local agencies of state government; are managed by boards of education on a not-for profit basis; have open admissions for most students living in the same neighborhood (and exceptions to that general rule only for especially disadvantaged or gifted students); are staffed by public employees (who are often represented by unions on a district-wide basis); and employ teachers who hold state licenses certifying their qualification to teach. These characteristics collectively constitute the traditional public school system.

A review of the legal literature on public education suggests that three values of constitutional significance are central to public schooling. The first is that "[w]hen a state creates a public system of education to which all children are entitled to attend, each child is vested with a property interest therein."[216] In many instances, a free public education at the primary and secondary levels is guaranteed by the state constitution. No child may be deprived of that entitlement without due process of law.[217] Moreover, every child is entitled to equal to equal educational opportunities.[218] This includes "all children, no matter what their race, socio-economic status, marital status, or form of handicap[219]

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[216] Kern Alexander and M. David Alexander, *The Law of Schools, Students and Teachers*, § 3.31, at 53 (1984).

[217] *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L.Ed. 2d 725 (1975).

The second fundamental value of public education is that it is a responsibility of state government.[220] Private persons may not interfere with the provision of government to equal services."[221] Thus, absent explicit authorization by the legislature, public school teachers may not strike.[222] If public school teachers may not strike because public education is a government function, public school teachers are public employees and entitled to the same rights as other public employees. Among those rights are the treatment of their positions as entitlements. They cannot be denied absent due process[223] and any rights they are granted under state laws regulating public employment, including statutes governing collective bargaining in public education.[224] The third fundamental value is that public schools may not teach religion.[225]

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[218] *Brown v. Board of Ed.*, 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873 (1954).

Courts were most reluctant to interfere with decisionmaking (by a school board) when deciding the early cases brought by parents who challenged board admission prerogatives. Beginning in the mid-1950's however, a move to secure equal educational opportunities for "all children" had its beginning in *Brown v. Board of Education.* Decided by the United States Supreme Court, *Brown* established the principle of extending equal educational opportunities to all children of school age as a matter of constitutional entitlement. Education, said the Court, "where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

H.C. Hudgins, Jr. and Richard S. Vacca, *Law and Education: Contemporary Issues and Court Decisions* (3d. ed.) § 9.3, at 275 (1991) (quoting *Brown* at 347 U.S. 691).

[219] H.C. Hudgins, Jr. and Richard S. Vacca, *Law and Education: Contemporary Issues and Court Decisions* (3d. ed.) § 9.3, at 277 (1991)

[220] The silence of the Federal Constitution, coupled with the language of the tenth amendment ("powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"), bestowed upon state government the legal responsibility for the establishment of public school systems. Thus, as the nation grew, and our population increased, individual states assumed complete authority to provide public education for their children, only restricted in action by the provisions of the United States constitution and by subsequent actions of that state's legislature.

H.C. Hudgins, Jr. and Richard S. Vacca, *Law and Education: Contemporary Issues and Court Decisions* (3d. ed.) § 1.5, at 17 (1991).

[221] In the American system, sovereignty is inherent in the people. They can delegate it to a government which they create and operate by law. They can give to that government the power and authority to perform certain duties and furnish certain services. The government is so created and empowered to employ people to carry on its task. Those people are agents of the government. They exercise some part of the sovereignty entrusted to it. They occupy a status entirely different from those who carry on a private enterprise. They serve the public welfare and not a private purpose. To say that they can strike is the equivalent of saying that they can deny the authority of government and contravene the public welfare. The answer to (the) question (of whether the teachers may strike) is "No."

Norwalk Teachers' Ass'n v. Bd. of Educ., 138 Conn. 269, 83 A.2d 482 (Conn. 1951), cited in Kern Alexander, *American Public School Law*, 697 (West 1985).

[222] *Norwalk Teachers' Ass'n v. Bd. of Educ.*, 138 Conn. 269, 83 A.2d 482 (1951). See generally, *Hortonville Joint School Dist. No. 1 v. Hortonville Ed. Ass'n*, 426 U.S. 482, 96 S. Ct. 2308, 49 L. Ed. 2d 1 (1976) (upholding dismissal of public school teachers engaged in impermissible strike).

Some twelve states provide teachers with a limited right to strike. Marc Dean Millot, *Negotiating the New American School: State Law on the Scope of Bargaining in Public Education*, Santa Monica, Calif.: RAND, MR-387-NASDC (forthcoming), at 24.

[223] See generally, *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed 2d 548 (1972); *Perry v. Sinderman*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed. 2d 570 (1972).

Once the values of public education are separated from the means of public education, it should become apparent that it may be possible to create new institutions of public schooling that are consistent with those values and the objective of charter school autonomy. The traditional system of public schools is not necessarily the only legitimate means of organization. No autonomy should be granted to individual charter schools that undermines the three basic values of public education discussed above; as long as the autonomy granted does not impinge on the values of public education, it should not be barred.

The charter school statutes examined in this report generally support the notion that charter schools are public schools promoting the values of public education. Nevertheless, the goal of autonomy occasionally is in tension with those values. The tensions are most apparent in statutory provisions restricting the affiliation of charter schools with private schools and for-profit institutions, and provisions regarding student admissions policies, labor relations, and teacher certification.

Private School and For-Profit Affiliation

Charter school advocates generally see no necessary contradiction between public education and private or for-profit charter schools.[226] Nevertheless, few states allow existing private schools to become charter schools or charter schools to be run on a for-profit basis.

Private education is often associated with elitism and privilege, and there is a concern that charter school students will receive special benefits at the expense of students remaining in traditional public schools run by the school district. Opponents to charter schools in teachers' unions and school agencies have played to these fears.[227] Objections to a decision to allow a private Montessori school in Minnesota to become that state's second charter school were based, in part, on the charge that public funds were being used to bail out a private entity.[228]

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[224] See generally, Marc Dean Millot, *Negotiating the New American School: State Law on the Scope of Bargaining in Public Education*, Santa Monica, Calif.: RAND, MR-387-NASDC (forthcoming).

[225] *Illinios ex rel. McCollum v. Board of Educ. of School Dist. No. 71*, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948). *See also*, H.C. Hudgins, Jr. and Richard S. Vacca, *Law and Education: Contemporary Issues and Court Decisions* (3d. ed.) § 12.3 (1991).

[226] The test of what's public is in the principles on which the activity operates, not in the legal character of the agent. A road is a public road because it is commissioned by the public, to serve a public purpose; paid for by the public and open to the public. Nobody thinks the test is in who built it.

Ted Kolderie, Charter Schools: *The States Begin To Withdraw The 'Exclusive'* 2, monograph, September 19, 1993, Center for Policy Studies, 59 West Fourth St., St. Paul, MN 55102.

Although private schools can be brought into a charter school program, it is expected that they meet the same standards as other public schools seeking charter status and public funding.

Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative* 5, Morrison Institute for Public Policy, School of Public Affairs, Tempe, Ariz.: Arizona State University, October 1993.

If the private school seeking charter status must adhere to the same requirements as any other charter school (and particularly to the prohibition against discrimination in admissions and to the requirement to meet student performance standards set out in the contract), and receives no more from the state than any other charter school in the way of payment for each student, the arguments against private charter schools have little merit. If all students are eligible to attend and the possibility of over-enrollment is dealt with by means of an admissions lottery, special privileges may go to the school's students, but elitism is not the obvious result. Indeed, by seeking charter status, a well-endowed school would benefit a student body more broadly representative of the public than it would as a non-charter private school, by making the school accessible to a far larger pool of students. The elite would actually be disadvantaged.

Public schools are not profit-making institutions and there appears to be a general concern that if charter schools are allowed to make a profit, the students will be short-changed or the public will be paying more than it should. This fear appears unfounded. So long as the school is meeting its contractual obligations (again particularly in the areas of admissions and student performance) and receives the same amount of funding per pupil as any other public school, it is difficult to describe precisely how students or the public would be short-changed.[229] If students feel disadvantaged in the way of basic education or support services provided by the school seeking to extract a profit, they are free to attend another school. Because school funding follows the student, the ineffective or even the unpopular school will be put out of business. Rather than harming the students, the profit motive arguably creates strong incentives to provide students with a solid education under enjoyable conditions. And if a charter school is able to meet its contractual obligations, while providing an educational environment students enjoy, at roughly the per pupil cost of educating a student at a school run by the local school district, it is hard to see how the public is ill-served. Indeed, efficient, effective, enjoyable charter schools run on a for-profit basis should tend to hold overall education costs down as traditional public schools are forced to follow suit in order to stay competitive. To the extent they exist, "excessive profits" could be dealt with by periodically amending the charter school statute's provisions regarding funding formulae.

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[227] Mary Amsler and Lori Mullholland, *Charter Schools* 4, Far West Laboratory, Policy Briefs No. 19, San Francisco , CA 94107. ("Union officials state their main objection to charter schools is the idea of public money going to what they believe are private schools.")

[228] Laurel Shaper Walters, "Charter Schools Offer Another Choice," *Christian Science Monitor*, June 8, 1993, at 11.

[229] One of the strongest arguments for nonprofit institutions occurs in situations where the purchaser of goods or services is no position to determine the quality of the thing purchased. Because nonprofit institutions are prohibited from distributing the surplus of revenues over expenses to those who control the institution, the purchaser may have some faith that the nonprofit producer of that good or service has no incentive to produce a lower quality product in order to increase his own income. Once the quality of a good or service can be determined (with student and school performance standards, for example) this rationale for relying on nonprofit producers disappears. See generally, Henry B. Hansmann, "The Role of Nonprofit Enterprise", 89 *Yale L. J.* 835, (1980).

Admissions Policy

A distinguishing feature of public schooling is open admissions. Students may not be denied admission on the basis of race, ethnicity, or religion. Most state constitutions assure that any child who lives within the state is entitled to attend a public school. There appears to be general acceptance of the notion that special public schools will be created to provide educational opportunities for students with extreme physical, socio-economic, or emotional disadvantages, as well as for students particularly gifted in such subjects as math, science, and the arts. There even appears to be public acceptance of the possibility that educating these special students will be more expensive than educating the mainstream. However, the public expectation also appears to be that these are exceptions to the more general principles that the overwhelming majority of public schools are intended for the mainstream student, that attendance at these schools will be open to all students, and that (at least within any given district) regardless of the school, students will receive an education of comparable value.

These expectations have often been translated into two kinds of statutory provisions in charter school legislation that undermine the value of autonomy. The first incorporates a bias in favor of the establishment of special charter schools for "at risk" students. The second is a tendency not to allow charter schools to limit admissions on any basis, for example, on the basis of academic achievement or affinity with a school's particular approach to education.

The bias towards proposals aimed at at-risk students. The bias in favor of special schools for disadvantaged or at-risk students undermines the autonomy objective because it tends to reduce the opportunities for schools aimed at mainstream students. Most statutes allow for only a limited number of charter schools in the state. Many limit the number allowed in any district. And some allow the district to "reasonably limit" the number themselves. Setting up a charter school for at-risk students, and justifying that decision on the basis of a statutory preference for schools serving disadvantaged students, may effectively nullify a proposal to establish a mainstream charter school in the district.[230] The value of autonomous schools is undermined and the concept of charter schools is marginalized when the charter option is effectively limited to schools for the disadvantaged. Given that school districts and teachers' unions already have few objections to special schools or programs for the disadvantaged, there is little reason to tilt the charter school statutes in favor of such programs to the detriment of mainstream options.[231] The legislative bias in favor of charter schools for the disadvantaged should be dropped.

The bias against restrictions on admissions to charter schools. A distinguishing feature of public schooling is open admissions. The public expects that: aside from a few exceptional schools for the gifted or the disadvantaged, public schools are for the mainstream student; attendance at these schools will be open to all students; and regardless of the school (at least within any given district), students will receive an education of comparable value.

These expectations sometimes translate into statutory provisions that prohibit charter schools from limiting admissions on any basis. Many statutes prohibit a charter school from restricting admissions on the grounds of achievement or affinity. There seems to be a fear that this will permit wealthy, sophisticated segments of the public to secede from the school system; leaving "rump" school districts with the overhead of central bureaucracies and services, the most problematic students, and inadequate resources.

Of course certain forms of discrimination, such as those based on race or ethnicity, are unconstitutional. However, restrictions on student admissions are not per se violations of the values of public education reflected in state and federal constitutions, which is why traditional public school systems are already able to establish special schools for gifted students. Moreover, provisions prohibiting any restriction on admissions can undermine school autonomy. A charter school proposal built around language, arts, or athletics; group or interdisciplinary teaching; or a merger of students from different grades into a single class is designed to succeed with students who are compatible with that approach. It may not succeed if it cannot exclude students who do not fit the description. The result of statutory prohibitions on any restrictions in admissions criteria may be that the schools serving mainstream students are not easily distinguished from traditional schools operating as part of the district, because they are forced to educate some mythical "normal" or "typical" student. In a practical sense, the autonomy of charter schools unable to depart significantly from the curriculum or organization of traditional schools is limited.

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[230] Minnesota is one state with a statutory bias towards schools serving at-risk students. Ted Kolderie explained the result to a reporter:

What we're seeing so far is that school boards would rather not bring in new and innovative programs," Kolderie says. "proposed schools that would take mainline regular kids are the ones that seem to get the maximum resistance from boards and superintendents."

Laurel Shaper Walters, "Charter Schools Offer Another Choice," *Christian Science Monitor* 11, June 8, 1993.

[231] On the attitude of teachers' unions towards special schools, see Hill and Millot.

Restrictions on admissions are far more objectionable on the basis of accountability for student outcomes and a charter school's educational performance. A charter school's decision to restrict admission on the basis of academic ability creates an unfair advantage for charter schools, by permitting them to screen out less capable student that the traditional public school must accept. It should be no surprise if charter schools with such an admissions program perform better than their traditional counterparts. This suggests a distinction between discrimination on the basis of affinity with a particular program and discrimination on the basis of ability. While open admissions is desirable to prevent students from being screened out in such a way as to skew a charter school's performance in comparison with traditional schools, a charter school should be able to condition continued enrollment on the maintenance of reasonable affinity standards.

A different type of provision sometimes found in charter school statutes incorporates a bias in favor of the approval of charters for schools designed to admit and serve "at-risk" students. Particularly where the legislation sets a cap on the number of charter schools, as most statutes do, this bias works to the detriment of mainstream charter school options. The bias undermines the autonomy objective because it tends to marginalize the charter school concept. A basic objective of charter school legislation is to challenge the public school system's operation of schools for mainstream students. School districts are already relatively willing to establish special programs that separate disadvantaged or problem students from the mainstream. In a practical sense, the autonomy of charter schools is constrained to the extent that the option is confined to educational programs aimed at students not served by traditional schools. The bias also suggests an attitude that runs counter to the public expectation that public schools are generally intended for mainstream students. By implying that charter schools should be considered special schools, provisions favoring schools for at-risk students deny educational opportunities to mainstream students who constitute the principal object of the public school system. In this respect, the bias undermines the concept of open admissions which constitutes a basic value of public education. Thus, from the standpoint of charter school autonomy and the values of public education, provisions incorporating a bias in favor of the approval of charters for schools designed to admit and serve "at-risk" students are unwarranted.

Labor Relations

Public Schools and Public Employees. In most state constitutions, state government is explicitly responsible to provide eligible students with an education. In the public mind, public schools are public institutions staffed by public employees. As a general rule in most states, these employees owe the public certain obligations, such as not engaging in strikes which disrupt the government's delivery of public services. In return public employees receive certain assurances from the government; most importantly, the treatment of their positions as entitlements subject to certain constitutional protections.[232] Public employees, including public school teachers, often have collective bargaining rights under state statutes governing public sector labor relations. Even where they do not have such rights, the salaries of public employees are often based largely on tenure and their positions protected according to seniority. In states permitting collective bargaining in public education, teachers negotiate with the school authorities over matters related to wages, working conditions, and terms of employment on a district-wide basis.[233]

Several of these features of public employment present obstacles to the autonomy of an individual charter school, and particularly the ability of the school's management to control the school's operation. Schools responsible for student performance rather than educational inputs, schools whose very survival depends on producing results rather than following procedure, must be able to reflect those requirements and incentives in the workplace. Management needs to be able to employ, advance, remove, and compensate teachers on the basis of competence rather than seniority. Unique schools residing within the physical confines of a school district should not be subject to the requirements of district-wide collective bargaining. Teachers in the school should be free to negotiate directly with that school's management, as they are in Massachusetts and Minnesota. In the end, this last point is the most important. Whether they are treated as public employees working in the public schools, or as private employees working for an entity providing public education (open admissions, no tuition), teachers and charter school managers should be free to negotiate independently of the local school district.

Teacher Certification To charter school advocates, teacher certification requirements represent precisely the kind of regulation charter school legislation is expected to avoid. To those interested primarily in student outcomes, certification requirements epitomize the current school system's focus on inputs. A school whose students perform according to contractual standards ought not to be questioned about the educational qualifications of its teachers.[234] A school whose students fall below those standards should lose its charter.

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[232] See generally, *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed 2d 548 (1972); *Perry v. Sinderman*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed. 2d 570 (1972).

[233] See generally, Marc Dean Millot, *Negotiating the New American School: State Law on the Scope of Bargaining in Public Education*, Santa Monica, Calif.: RAND, MR-387-NASDC, (forthcoming).

On the other hand, the public officials who are responsible for approving charter school applications have a right to take into account the educational credentials or potential of the teaching staff proposed by the applicant. Teacher certification is certainly a legitimate consideration. An approving authority could reasonably decide not to approve a charter because the proposed staff included too many uncertified or otherwise untested teachers, making it unlikely (in the view of the authority) that the school's educational program would succeed.

CONCLUSION

In the end, each provision of a proposed charter school statute should be examined in terms of the balance among the charter school concept's core values of autonomy and accountability, and the more fundamental values of public education. In an ideal world, no provision to promote school autonomy should be allowed to undermine accountability for results. However, given the lack of valid and reliable measures of student performance, this balance will be hard to determine and must rely on essentially subjective judgments. Similarly, the provisions of charter school statutes should grant no autonomy to individual charter schools that undermines the core values of public education. As long as the autonomy granted does not impinge on the values of public education, it should not be barred.

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[234] See generally, Marshall and Tucker, at 159-60 ("The only thing that matters is what teachers actually know and can do".)

V. TOWARDS A MODEL CHARTER SCHOOL STATUTE

This section describes a model charter school statute. The basic assumption guiding its design is the need to balance the goals of autonomy and accountability while maintaining the core values of public education in primary and secondary schools. This section draws on what the comparative analysis in Sections 3 and 4 suggests is best in the existing charter school statutes, and on the efforts to mitigate the tensions between autonomy and accountability, and between autonomy and the values of public education contained in Section 5.

The model statute consists of five parts covering:

- the legislature's intent in passing the statute;
- the scope of a charter school's legal autonomy;
- the process of approving a charter school;
- the monitoring and oversight of charter school operations;
- the process of revoking a school's charter.

Each part contains a series of sections covering important aspects of a charter school's existence; each section contains detailed provisions. The statute is accompanied by a running commentary on the intent, scope, and meaning of each provision and its relation to other provisions in the statute. The commentary also notes the relationship of the model statute's provisions to existing charter school legislation. Where there is more than one way to meet the objectives of the statute, or where there is no obvious way to meet its objectives, optional provisions are described. Such provisions are enclosed by brackets and covered in the explanatory text.

The model statute does not take into account the unique characteristics of the legal framework of public education in every state. Those using this draft as a basis for their own legislation should not neglect a careful analysis of their own state constitution and state code to identify potential conflicts.

LEGISLATIVE INTENT

The objective of this part of the model statute is to express the legislature's intentions in four key areas: the scope of the basic bargain of autonomy for accountability, the statute's beneficiaries, potential organizers, and the innovative nature of the charter school program.

Autonomy for Accountability

> *The purpose of this legislation is to offer members of the community a charter to organize and run independent public schools, free of most state and district rules and regulations governing public education, as long as they meet the requirements of this act, and particularly the obligation to meet measurable standards of student performance. Schools established under this legislation shall be known as charter schools.*

This section reflects the basic bargain of autonomy for accountability proposed by charter school advocates and offered in several statutes. It is a "strong" version of the bargain, placing equal emphasis on an individual school's independence from state and district control, and on the school's performance responsibilities, especially for student outcomes. It indicates that what potential school organizers are being offered is a "charter" of indefinite duration, something like that implied by Michigan's legislation, rather than the renewable contract authorized in most charter school statutes. This section also explicitly recognizes an intent to create "public" schools, implying an objective to maintain the values of public education. Finally, this section notes an intent not to limit potential charter school organizers to particular groups; subject to the requirements of the act, the entire "community" is the source.

Beneficiaries

> *This legislation is intended to provide parents and students with improved measures of school performance and greater opportunities in choosing public schools within [and outside] their school districts, and to provide for a well-educated community.*

Unlike several of the statutes examined in this report, teachers are not singled out as beneficiaries of the model statute. Teachers can benefit as school operators or members of an applicant group. Nevertheless, as explained in this section, the fundamental objective of the model statute is to improve educational opportunities for students by increasing the number and types of public schools they may attend in their school district or state, and improving their ability to make choices based on school performance. In the final analysis, the community benefits from a better-educated citizenry.

The bracketed term would be consistent with a statute that extends potential eligibility to any charter school to any student in the state. Without the bracketed term, the section extends the charter school option only to students within the district where the charter school is located.

Potential Charter School Organizers

> *This legislation is intended to encourage any person or [nonsectarian] entity that can meet the requirements of this statute to form a charter school.*

This section makes clear that any member of the community—individual, association, or corporation—is eligible to apply for a charter. This does not rule out sectarian institutions from applying to form charter schools individually or as part of a team, but as the section below on restrictions indicates, such a charter school cannot base admissions, the educational program, hiring or any other operational practice on religious principles or practices. Adoption of the bracketed term would prohibit any affiliation with a sectarian institution, on the theory that a demarcation between sectarian affiliation and sectarian practice is unrealistic or impossible to determine and police.

Innovation not Experiment

> *The purpose of this legislation is to create an alternative to public schools operated by school districts and improve public education overall, by establishing a system of independent charter schools throughout the state.*
>
> *There shall be no limit to the number of charter schools that may be established in the state.*

This section embodies the concept of independent charter schools as a public school alternative to the system of centrally-managed district schools. The legislation is not an experiment; it is intended to be institutionalized as a permanent innovation. Moreover, the creation of an alternative system of public schools is intended to increase competition among public schools.[235] No limit is placed on the number of charter schools that may be formed; one objective of the statute is to foster a real competition with the system of district-run schools in the provision of public education services. The legislation opens the possibility that district-run schools, and hence school district bureaucracies, could be put out of business, creating real incentives to improve the traditional system. The intended effect of this competition is to improve the general level of public education throughout the state.

LEGAL AUTONOMY

This part of the model statute establishes the scope of a charter school's independence, which is broad and in keeping with the legislative intent of a strong basic bargain. The full scope of autonomy is defined by the school's legal status; its powers and exemptions from state and district rules and regulations; statutory restrictions on the use of those powers and the extent of exemptions; the nature of labor relations at the school and the school's self-government; the school's responsibility for displaced students and teachers, and for student transportation; the means and process of school financing; and the assistance given by the state to potential charter school applicants.

Legal Status

> *A charter school is a public school including one or more of grades K through 12, managed by a board of directors, which operates independently of any school board, under a charter of indefinite duration granted by an approving authority subject to this legislation.*

For the most part, this definition of a charter school's legal status incorporates the essential elements of autonomy favored by charter school advocates, generally endorsed in those statutes which offer the strong bargain. It first makes clear that charter schools are part of the public school system covering grades K through 12. It establishes that these schools are run by boards of directors which act independently of school districts. Echoing the basic bargain expressed in the sections under legislative intent, but going beyond most of the current charter school statutes, the definition further establishes that the schools are granted a charter of indefinite duration under the terms of the model statute, rather than a contract for years with the possibility of renewal.

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[235] See generally, Marcella R. Dianda and Ronald G. Corwin, *An Early Look at Charter Schools in California* (Southwest Regional Laboratory, April 1993), at 4-6.

> *A charter school shall be organized and managed under the state's business corporations, cooperative, or non-profit corporations statutes.*

This section provides clear guidance on the forms of organization a charter school can adopt under the statute. It is intended to mitigate problems applicants may have in determining their form of self-government, and to help clarify the rights, powers, and authorities of the school and its managers and employees. The requirement that charter schools adopt statutory forms of organization allows charter school organizers to focus their creative energies on their educational program. It also enables approving authorities to draw on sources of knowledge in what are essentially problems of private internal governance that exist elsewhere in state government, and emphasizes their true area of expertise—education policy.

Schools may be organized as corporations or cooperatives which allow for the distribution of any profits, or as non-profit corporations which do not. State law on these forms of organization is generally well-developed, providing substantial guidance to approving authorities, school organizers, managers, employees and third parties dealing with the school. Each organizational form offers advantages and disadvantages to charter school organizers. For example, as a general rule, charter schools organized as business corporations can distribute as dividends to their stockholders the cash surplus remaining after expenses are deducted from revenues obtained from state per pupil payments to the school. (This provides a powerful incentive to improve the efficiency of charter school operations.) However, the charter school's profit will be subject to taxation at the corporate and stockholder levels, and the school cannot receive the tax-deductible gifts available to a non-profit corporation. The profits distributed to the members of a charter school organized as a cooperative will only be taxed at the member level, but the entity cannot accept tax-deductible gifts. Non-profit educational corporations may accept tax-deductible contributions, but cannot distribute any cash surplus to members of the organization. By providing the option of taking any one of these three forms, the model statute allows charter school applicants to adopt one best suited to their particular needs.

It is important to note that this section is intended to deal solely with the organization and taxation of the school. It is not intended to establish the school's legal status for other purposes. The school's complete legal personality is the sum of all the provisions contained in the model act.

> *The board of directors of a charter school shall be deemed public agents authorized by the state to control the charter school.*

This provision establishes that through the charter a board of directors of a charter school has been delegated responsibility to run the school as a public school and the members are public agents for that purpose. Unless otherwise directed by statute, members of the board of directors will be subject to the obligations and protections of state law governing public agents while acting in their public capacity:

> *A charter school shall be considered a public school district for all purposes not otherwise described in this statute.*
>
> *A charter school may sue or be sued to the same extent and on the same conditions as any other public school district.*

These sections put the individual charter school in the same position as a school district, the basic unit of the state public school system for purposes not otherwise specified in the act. This may minimize the need to change other aspects of state law to account explicitly for the advent of charter schools. It also fosters direct competition between the centrally-managed district schools and the independently-operated charter schools on a relatively level playing field; they have the same responsibilities to the state, and are offered the same opportunities and support.

Powers

> *Consistent with the provisions of its articles of incorporation, bylaws or membership agreement, a charter school shall have the power to:*
>
> - *manage the implementation of its approved educational program;*
> - *determine its own budget and operating procedures;*
> - *acquire and convey interests in real property;*
> - *receive and disburse funds for school purposes;*
> - *incur debt;*
> - *accept gifts;*
> - *contract with any school district, or any other public or private [nonsectarian] entity also empowered to enter into contracts, for any and all real property, equipment, goods, supplies and services, to include educational instructional services, except that a school district may not charge a charter school rent for the use of real property and must make unused buildings or space in buildings available to a charter*

school, and shall bargain in good faith over the cost of services and maintenance related to such space;

- *hire, manage, and fire any school employee in accordance with the terms of this statute;*
- *[establish reasonable standards for students to continue enrollment in the charter school.]*

This section enumerates the powers of the charter school. The charter school controls the implementation of the educational program (curriculum and instructional strategy) contained in its approved charter, and sets its own budget and procedures. These powers guarantee the school control over decisions fundamental to its future success. In addition, the school is granted supporting powers that contribute to independence, such as the right to control its finances, contract for goods and services, and acquire property rights. By transferring these supporting powers to the charter school, the section eliminates a means that a school district might otherwise use to acquire indirect control over charter school operations.

For the same reason, this section makes clear that an arms length relationship exists between the charter school and the school district within which the school is located in any contracting over services that will be supplied by the district. Combined with the provisions in the section below on school finances, establishing per pupil payments and specifying that such payments will be transferred directly to the charter school, the powers granted to the charter school in this section put it in a position of equality in negotiations with the district. The school district retains control over its own space, but is obligated under the statute to make unused space available to the charter school free of charge. The price and extent of services connected with the space are subject to good faith bargaining.

The section contains a bracketed term amending the charter school's right to contract with private entities. Its adoption would prohibit any contractual relationship with a sectarian institution, on the theory that a demarcation between sectarian affiliation and sectarian practice is unrealistic or impossible to determine and police.

In subsequent sections (see below), the statute offers several alternative labor relations schemes for charter schools. The provisions of this section make clear that the charter school is the public employer, whatever the scheme. Subject to the alternative provisions of the section on labor relations, the charter school has the sole power to hire, manage, and terminate its employees.

The section contains a bracketed provision concerning continued enrollment. In keeping with the core values of public education, the section below on restrictions establishes the general rule that a charter school must admit any student in the district. There is some question as to whether the values of public education prohibit charter schools (as an alternative system of public schools for the mainstream student, rather than another form of exceptional public school for students gifted in math, science or the arts) from requiring students to maintain certain academic standards or demonstrate an affinity with the school's particular focus. Moreover, the possibility that a school could meet its charter obligations as to student standards by eliminating students who are unable to meet those standards may undermine the value of accountability. On the other hand, a performance contract between the school and the student/parent, could provide a source of motivation at the individual level that would help raise educational levels overall. The section is bracketed because a resolution of this problem in favor of the provision should not be essential to the success of charter schools. The argument of charter school advocates is that, with autonomy, individual public schools can raise the level of student performance overall—not that the goal of improving student performance requires the charter school to restrict admissions like a private school.

Exemptions

> *A charter school is exempt from all provisions of the state code governing public schools and school districts and all school district regulations, except as specified in this legislation, although it may elect to comply with one or more provisions.*

This provision establishes a blanket exemption from state and local regulations, except as explicitly stated elsewhere in the charter school legislation. Charter school applicants may choose to be bound by state or local regulations, but read in combination with the section below on approval criteria, this provision does not permit an approving authority to condition approval on a charter school's acceptance of such regulations.

Restrictions

> *A charter school shall not:*
>
> - *charge tuition;*
> - *engage in any sectarian practices in its educational program, admissions policies, employment policies or operations;*

- *restrict student admissions, except by age and grade, or by lottery in the case of over-enrollment, and except that students attending a school converted to charter status or siblings of such students [or (for a period of five years) students residing in the area of that school] shall be given preference;*
- *in the case of schools converted to charter status, discharge employees who elect to remain at the school, except for good cause;*
- *be formed to circumvent a court-ordered desegregation plan.*

This section embodies several of the essential values of public education reflected in federal and state constitutions. Its provisions constitute the necessary and sufficient conditions of an American public school. The provisions also incorporate a recognition of certain political realities if the charter school concept is to be extended to the conversion of existing schools run by the school district.

First, public schools do not charge tuition. A free primary and secondary education is a right embodied in many state constitutions.[236] Thus, charter schools cannot charge tuition.

Second, the operations of public schools are not based on religious principles. Public schools do not teach religion or base admissions, hiring, or day-to-day operations on religious doctrines. Under the model statute, charter schools are also prohibited from engaging in religious practices.

Third, public schools generally are open to any resident of an age or grade appropriate to the school, although places in any given school are rationed. In the traditional school system, they are rationed by geography (i.e., according to residence). In the charter school, they are rationed by lottery (in the event of over-enrollment).

A necessary exception to this rule follows from the conversion to charter status of a school managed by the district. As provided by the section on approval criteria, conversion requires approval by super-majorities of teachers and parents at the school. Conversion is thus a community choice to change "their" school. It would be inconsistent with this proposition, counterproductive to the goal of creating a system of charter schools, and politically impractical to require parents to give up their residential right to a place in their "local" school in return for a lottery ticket to a place in the converted charter school.

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[236] See, Va. Const. art. VIII, § 1, effective July 1, 1971. (" The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth....")

Similarly, it is counterproductive and impractical to expect teachers to vote for conversion if they can be displaced from their jobs. Therefore, teachers and students of a converted school, and siblings of those students, will be allowed to attend if they so choose. A bracketed optional provision would indefinitely, or for some period of years, extend that preference to students who live in the area that supplied students to the school before conversion. The theory supporting this approach is that as a result of the decision to convert, students have in fact lost the alternative of attending a local school run by the district in which enrollment is tied to residence and should be given this preference as compensation.

Finally, the section contains a provision making clear the legislature's intent that the charter school statute not be used to eviscerate a court decision ordering the desegregation of a school district. It is not likely that an attempt to bypass such a court order would pass judicial scrutiny in any event.

Labor Relations

> *The employees of a school converted to charter status who chose not to remain at the charter school shall be given preference in filling positions in the school district.*

Like the provision in the above section covering restrictions that require a converted charter school to retain employees who wish to remain at the converted school, practical political considerations require this provision assuring the teachers who wish to leave the converted school preferential treatment in hiring within the school district the converted school has left. Without such a provision, teachers who might not otherwise stand in the way of conversion will be forced to oppose it.

> *The employees of a school converted to charter status shall not be part of any bargaining unit representing employees of the school while it was still part of the school district.*

The autonomy essential to a charter school requires independence from the district teachers' union as well as from the school district's board and central bureaucracy. This provision assures that if the teachers and other employees of a school converted to charter status choose to be represented by a union (the provision does not require them to organize) they will become a separate entity, distinct from any union representing the employees within the district where the school is located. Any negotiation between the charter school and its employees will not be subsumed by district-wide negotiations.

> *The board of directors of a charter school [may hire any person it deems qualified as a teacher] OR [shall hire only certified teachers] to instruct students at the school.*

One of the most contentious issues in charter school legislation concerns teacher hiring. Charter school advocates, focused on educational outcomes and opposed to what they consider an over-emphasis on educational inputs, generally oppose hiring requirements that restrict school organizers to certified teachers. In their view, the qualification of teachers in schools that meet the performance requirements specified in their charter should not be scrutinized. Schools that do not meet performance requirements ought to be put out of business. On the other hand, to protect the job security of their members, teachers' unions are likely to oppose legislation that permits the hiring of non certified teachers in public schools.

Thus, this provision contains alternative bracketed formulations concerning teacher certification. In those states with relatively weak teachers' unions, the charter school statute will permit charter school managers to hire uncertified personnel for teaching positions. In those states where it is necessary for passage of the charter school legislation, the charter schools will have to hire certified teachers. While the uncertified approach is more in keeping with the philosophy of charter schools, it is probably not necessary to the success of such schools, particularly if the state has passed legislation allowing alternative, nontraditional routes to certification.

> *Labor relations between the charter school and its employees shall be governed by state law covering labor relations in the public sector.*

The status of charter school employees is an important issue. The fundamental reason for requiring charter school employees to be governed by public sector labor law has to with the fact that charter schools are public schools, and the government cannot permit public functions to be held hostage to private demands. In short, public functions cannot be threatened with strikes by employees unless the legislature permits them. In fact, the general rule is that public employees are prohibited from striking by state law. In return for entering into an employment relationship where they do not have the right to strike, public employees are granted protections unavailable to workers in the private sector, particularly the treatment of their job as a legal entitlement.

If charter schools are public schools, private interests cannot be allowed to threaten the provision of the public education function. Charter school employees cannot be permitted the right to strike. Nor can charter school managers be allowed to close a school by "locking out" its employees. Therefore, charter school employees should be treated as public employees and their relations with charter school managers governed by public sector labor law.

> *At their request, teachers employed by any school district in the state, but not teachers employed by another charter school, shall be granted a [three] year leave of absence to teach in a charter school. At the end of that period, they shall be allowed to return to the school district with the same level of seniority as when they left to take the leave of absence.*
>
> *Charter school employees may choose to remain in or be covered by the state teachers' retirement system or the public employees' retirement system.*

Particularly if charter schools must hire certified teachers, it is essential that charter school applicants have access to the largest possible pool of experienced certified teachers. Even if they are permitted to hire uncertified personnel to fill teachers slots, charter school organizers are bound to want experienced certified teachers as well and perhaps even as the vast majority of their teaching staff. But charter schools are likely to be perceived as risky ventures by experienced teachers. Unless they can limit their personal risk in some way, the everyday responsibilities of family and the need of relatively low-paid teachers to plan for retirement may keep too many good teachers from joining the charter school system. What is necessary is a leave of absence long enough for the teacher to make an informed choice between a career in the independent charter school system and the system of schools centrally managed by school districts. The three year period bracketed is an attempt to establish a reasonable period of time for the teacher to judge the viability of the charter school concept and his or her suitability to that work-style. The provision is not risk-free—teachers will not be guaranteed the same position they had when they took their leave of absence, but it will protect their career seniority.

The provision also protects teachers' pensions and retirement pay, allowing them to be covered by their choice of state or other systems.

No leave of absence is permitted to teachers already employed by a charter school who wish to move on to another charter school. This is intended to discourage charter schools from competing for the small pool of teachers already employed in charter schools and reflects the understanding that an individual charter school will not have the flexibility of a large school district.

Self-Government

A section addressing a proposed charter school's method of self-government, contained in many other statutes, is not necessary in the model statute because this legislation requires the school to be organized under the state's business corporations, cooperative, or non-profit corporations statutes. Those statutes and the case law that has grown up around them establish methods and processes of self-government.

Responsibility for Displaced Students and Teachers

The separate sections in many statutes governing students and teachers displaced by conversion are not necessary in this model statute because these issues are covered in the above section on restrictions.

Responsibility for Student Transportation

> *The charter school may elect to have the school district where the charter school is located transport students residing in that district to and from the charter school on the same basis offered to other students attending schools operated by the district, or to receive from the district a payment equal to [the average per student cost of transportation within the district] and become responsible for the transportation of those students to and from the charter school. In the case of students not residing in the district where the charter school is located, the school district where the student attending the charter school resides shall be responsible for that student's transportation to and from the charter school on the same basis as is made available to students attending schools within that district or shall pay to the charter school an amount equal to [that district's average per student cost of transportation in the district].*

School districts are often major transportation agencies as well as educational authorities, with impressive resources for the movement of large numbers of students over long distances via complex routes. This provision allows the charter school to take advantage of those capabilities on the same basis as is offered to any other student in the district, or to assume responsibility for student transportation and receive a payment from the district equal to the average per student cost of transportation within the district. The districts of students who live outside the district where the charter school is located have the choice of providing transportation to those students or making payment to the charter school and leaving it with the responsibility.

The formulation of this provision, which leaves the charter school with the choice in the case of students residing in the district where the school is located and the district with the choice where the student resides outside the district where the charter school is located, is deliberate. The purpose of the former is to promote equity as between charter and district-operated school students in the area of transportation. It provides a strong incentive for the school district where the charter school is located not to give the transportation of charter school students short shrift and thus discourage parents from sending their children to such schools for reasons of convenience (rather than performance). Charter schools that are dissatisfied with district transportation can exact a penalty from the district in the form of a transfer payment to the charter school to cover the costs of assuming the responsibility for transporting its students, a payment that may well exceed the district's marginal cost of transporting those students. On the other hand, it is unlikely that a school district where a particular charter school is not located would have many students attending that charter school. If it can efficiently transport students to the school on the same terms as available to its students attending the schools within that district, it should be allowed to. If it decides it cannot do so, it should be able to make a direct payment to the school.

School Financing

> *Charter schools shall be eligible for public funds on the same basis as a school district. Charter schools shall receive such funding directly.*

Charter school finance language requires careful attention. This portion of the model act must be tailored to the unique circumstances of each state. The final version of this provision should be developed and vetted by experts in the state's system of school finance.

The objective of this provision is to place the system of independent charter schools on an even footing with the system of schools operated by school districts. The two systems are funded on the basis of the same formula, and because the charter school receives its funding directly, rather than through the school district, it is in no way beholden to the district. When read in combination with the provision on district-charter school negotiations in the section above on charter school powers, the provision in this section eliminates the situation in the Colorado statute where the school board negotiates with the charter school organizers over both the size of the per pupil payment and the cost of services provided by the district, as well as the terms of the charter.

> *[Charter schools shall be eligible for special start-up funds per (separate section).]*

Charter schools must be organized before they can be operated, but payments by the state are based on attendance. Thus, the normal funding process does not cover the costs of developing a charter school proposal or getting the school up and running. This bracketed provision provides a means of meeting these start up costs. (One source of the funds will be the monies provided in the re-authorization of the Elementary and Secondary Education Act passed by Congress and signed into law by President Clinton in October 1994.) It is an optional provision because at least some of these costs should be met with private sector financing. A well-organized proposal will contain what is, in effect, a business plan covering expected revenues and expenditures. When combined with the provision in the section on powers permitting a charter school to borrow money, this should allow a charter school with an approved plan to obtain a loan for start up costs from a financial institution, with the loan to be repaid out of the revenues generated by attendance.

This leaves only the costs of developing the charter school proposal. It is not obvious that the state should subsidize the development of every charter school proposal with direct cash grants. Some proposals will be made by organizers expecting to make a profit, in which case the development cost is an investment. Other proposals may come from unqualified teams, in which case a subsidy would waste the taxpayer's money. Determining who to subsidize could be an expensive undertaking by itself. Moreover, the ability to develop a proposal without state assistance is a legitimate indicator of support for the proposed charter school. Nevertheless, in certain instances, such as when the parents and teachers at a district-managed school vote to convert to charter status, legal, accounting, and other services must be procured. This optional provision provides a means of obtaining these necessary funds, although the process of obtaining these funds, and the criteria for providing them, and the purposes for which they can be used is left to a separate statute. It is also conceivable that technical assistance provided by the state to potential charter school applicants under the section directly below could obviate the need for a cash subsidy.

State Assistance

> *The state [department of education] shall distribute information announcing the availability of the charter school program, explaining the powers and responsibilities of a charter school contained in this statute, and describing the*

> *application process to each school district, town and city government, and public post-secondary educational institution, and through press releases, to each major newspaper in the state.*
>
> *The state [department of education] shall provide technical assistance to potential charter school applicants.*
>
> *The state [department of education] shall provide technical and other forms of assistance to charter schools on the same basis as to school districts.*

This section assures that the charter school alternative will become known to potential organizers and parents, and some form of technical assistance will be made available to potential organizers. The first provision gives a state education agency the responsibility and authority to widely disseminate information about the program. The second requires a state education agency to assist school organizers in drawing up their applications. The state department of education has been bracketed, but conceivably the state board of education or another agency could be responsible for these functions. It is conceivable that the level of assistance provided could obviate the need for special start-up funds for proposal development discussed in the above section on school financing.

The sub-section above on legal status states that "a charter school shall be considered a school district for all purposes." Therefore, after a school has received its charter, it is entitled to the same technical assistance that state agencies make available to school districts.

THE APPROVAL PROCESS

This part balances the values of autonomy and accountability during the period in which an approving authority must decide whether to grant applicants their proposed charter. Included in this section are an explanation of the information contained in a charter school application, the process by which an application will be considered, and the criteria approving authorities must apply in making their decisions.

The Charter School Application

The application is a proposed charter and must include:

- *the identification and description of the individuals and entities submitting the application, including their names and affiliations;*
- *a description of the chosen form of organization, including the articles of incorporation and by-laws, or the membership agreement, and a description of the school's decisionmaking authority and procedures contained in those documents;*
- *a mission statement for the proposed school, consistent with the description of legislative intent in this legislation;*
- *a description of the school's educational program, including curriculum and instructional strategies;*

This section identifies the information a charter school applicant must provide to an approving authority, establishing the basis for an important difference between this model statute and the state legislation examined in this report—an emphasis on objective approval criteria, explained in the following section. This section contains provisions requiring the applicants to identify and describe themselves; the form of organization proposed for the school; the proposed educational program; the performance standards the school is prepared to meet; the means of assessing school performance; the proposed financial plan for the school; and proposed plans to meet insurance, student discipline, and health and safety requirements. This information can serve as the basis of an approving authority's decision to grant a charter.

- *[the identification of pupil performance standards, which must meet or exceed one or more of the (following standards chosen by the applicant {named standards contained in the statute}) OR (standards identified by the {state board of education}), as measured by one or more of the means of assessing performance established for the selected pupil performance standards chosen by the applicant;]*

OR

- *[the description of student performance standards which must meet or exceed those set by the [state board of education], and be measured according to the same testing and portfolio requirements, for students in other public schools;]*

With regard to the performance standards applied to individual students attending the school, the model statute offers two alternative provisions. The first allows charter school applicants to choose the performance standards they are prepared to meet from a list in the statute or identified by a state education authority, and then to choose among alternative means of assessing each performance standard, again from a list in the statute or identified by a state education authority. This alternative allows charter school organizers to choose standards and means of assessment best suited to their educational program, fostering a broader pool of potential applicants.

This first alternative provision itself contains two alternatives regarding the identification of standards and means of assessment. One alternative lists them in the statute; the other leaves the creation of the list to a state education agency. The advantage of the first approach is that it limits the discretion of state education authorities and promotes a more rapid implementation of the statute. The second has the advantage of allowing the standards and means of assessment to keep up to date with advances in education research. Another approach would be to combine the two alternatives, incorporating some into the statute and allowing a state agency to maintain a supplemental list.

The second alternative provision assumes a single set of student performance standards and means of assessment established by a state education agency that will apply to every student in the public schools. The charter school applicant will not choose them; and an approving authority will not negotiate with the applicant. The single set may discourage certain charter school applicants with otherwise viable educational programs (as compared against one of the more diverse set of standards in the first alternative), but it would be easier to manage. And it is conceivable that a single set of standards and means of assessment could be formulated in such a way as to cover a broad array of educational programs.

- *a description of the plan for evaluating pupil performance and the procedures for taking corrective action in the event that pupil performance at the charter school falls below such standards;*

The previous provision requires the charter school applicant to identify the standards and means of assessment student performance that will be used at the school. This provision requires the charter school applicant to explain how the means of assessing student performance will be employed, and if the assessment identifies students performing below the chosen performance standard, how the school plans to address the problem. The provision places the school on notice of its need to evaluate student performance and its obligation to take corrective action.

- *a description of the school performance standards, which must meet or exceed [one of the following standards chosen by the applicant (named standards)] OR [those set by the state board];*

Student performance standards and the means of assessing *student* performance serve as the basis for *school* performance standards and the means of assessing *school* performance. Given the claims of charter school advocates that they can improve on the educational performance of students in district-run schools, it follows that the performance standards for charter schools will be based on some measure of improvement over the district. However, a wide range of measures is possible. Improvement over the district might be expressed in terms of charter school student performance that exceed the district mean or average, a rate of progress over a baseline performance of district students in a given year, or a standard tailored to particular categories of students, such as the economically disadvantaged. Whatever those standards are, this provision is designed to keep them non-negotiable.

This provision contains two alternative approaches to achieve this objective. One is to have a set of standards written into the statute and from which the applicant can choose. The second is to allow the applicant to choose from a list established by a state education authority. The first approach fosters more rapid implementation of the charter school act, but is not designed to keep pace with the results of research into school standards. Changes in standards will have to be made by amendment to the legislation. The second approach allows school performance standards to be tied more closely to the results of empirical research, but also gives state educational authorities opposed to charter schools for political reasons a means of obstructing implementation of the legislation. A third alternative would be to combine the two approaches, writing some standards into the statute, but allowing the school board to maintain a supplemental list.

- *evidence that the plan for the school is economically viable, including a proposed budget of projected revenues and expenditures for the first [three] years, a plan for starting the school, and a description of major contracts planned for equipment and services, leases, improvements, purchases of real property, and insurance;*

This provision requires the applicant to demonstrate that the proposed charter school is economically viable. The most important aspects of this are the provision of a proposed multiyear budget and a description of contracts essential to start and operate the charter school. The charter school is more than an alternative educational program, it is an independent economic and legal entity. Applicants should be required to demonstrate a keen awareness of this fact from the outset. The requirement for a proposed budget forces the applicant to develop what is in effect a multi-year business plan and, in turn, provides a strong incentive for the charter school organizer to obtain professional legal, accounting, facilities, personnel, and other advice.

- *a description of the proposed financial management procedures, including annual audits of the school's financial and administrative operations, which shall meet or exceed [the same standards, procedures, and requirements as a school district] OR [generally accepted standards of management and public accounting];*

This provision requires the applicant to describe the management and audit procedures that help assure that the school's organizers will meet their fiduciary duties to taxpayers and parents. Like the requirement to include a business plan in the application, the demand for an explanation of management and accounting procedures provides an incentive for charter school organizers to seriously consider aspects of a successful independent school's operations other than the educational program.

The provision is also intended to make clear an objective standard the applicant must meet in the design of these procedures. One approach is to require the charter school to meet the same standards as a school district. If a charter school's size and scale makes that standard unworkable or unhelpful, an alternative approach is to require the applicant to meet generally accepted standards, such as exist in public accounting.

- *an assessment of the school's potential legal liability and a description of the types and limits of insurance coverage the school plans to obtain;*

This provision requires applicants to clarify the charter school's potential legal liability, based on an analysis of the school's legal status and the particularities of the educational program, facilities, transportation, and contractual arrangements that constitute the school. Again, the provision forces the charter school applicant to focus on important non-educational aspects of the charter school's operation.

- *a description of the procedures the school plans to follow to discipline and dismiss students;*

Public education in grades K through 12 is a constitutionally-protected legal entitlement that students cannot be denied without due process of law. This provision requires that charter school applicants explain how they will meet the legal requirements of the Constitution and state law in the area of student discipline.

- *a description of the procedures the school plans to follow to assure the health and safety of students, employees and guests of the school and to comply with applicable federal and state health and safety laws and regulations;*

Schools have legal obligations to protect the health and safety of student, employees, and visitors at the school or under the supervision of school personnel. This provision requires charter school applicants to explain how they propose to meet these obligations. Like many of the other provisions in this section, this one is also intended to force the applicant to consider the full range of issues related to the operation of an independent school.

- *[an agreement that the school will comply with all other state law relevant to public bodies and with federal law applicable to public bodies or school districts.]*

The section also contains a bracketed provision requiring the applicants to state their intent to comply with relevant federal and state law, a requirement that may well exist in any event.

> *Applicants proposing the conversion of a public school currently operated by a school district to charter school status must first receive the approval of [66]% of the teachers at that school in a secret ballot and [66]% of the parents of students enrolled in that school who, with [30] days notice in two local newspapers, attend a meeting held for the specific purpose of voting on the proposed conversion by secret ballot. Evidence of the results of this vote must be attached to the application.*

The final provision in this section concerns only public schools operated by the district that seek charter school status. This provision requires that super-majorities of teachers and parents with children attending the school vote in favor of conversion, provides for a means of giving public notice of the secret balloting, and requires that the charter school application contain evidence certifying the favorable votes.

Approval Procedure

> *An approved charter school application shall constitute a charter granted to the charter school by the approving authority on behalf of the legislature and shall be governed by the terms of this statute.*
>
> *Charters shall be modified by the same procedure and based on the same criteria as they are approved.*

This section, covering the approval process, begins with a provision establishing that an approved charter school application is the charter governing the approved school's operation and that the charter incorporates the terms of the charter school statute itself. It also establishes that the approving authority has been delegated the responsibility to grant charters under the terms of this statute by the state legislature.

The section also contains a provision establishing that modifications to the charter must be made according to the procedure established in this section. As will be seen in the provisions below, this places the initiative for changes in a charter squarely in the hands of the school, except to the extent that changes are initiated to avoid charter revocation (explained in the section below on revocation). So, for example, a school that seeks new student and/or school performance standards would use the process described in this section to gain approval by the approving authority.

Option A: Alternative Sources of Approval

> Charter school applications may be approved by the following authorities:
>
> - a local school board;
> - a community college;
> - a state public university;
> - the state board of education;
> - [other state education agencies].
>
> Approving authorities shall be responsible for oversight of the charter schools they approve and shall have sole authority to determine whether the school is meeting the terms of its charter.

Potential charter school applicants may engage in discussions with approving authorities before submitting an application for approval to establish a charter school.

Charter school applications shall be submitted to approving authorities by [December 31] for schools to be established and prepared to admit students [on or before August two years later].

Approving authorities may limit the number of applications they will accept and shall announce the number they will accept by [May 31] of that year.

Within [90] days of receiving the application the approving authority must rule on whether to approve the application.

Each approving authority shall form an accountability committee to review charter applications. The accountability committee's report to the approving authority shall address the approval criteria [See below]. The committee shall meet with the applicants in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report [30] days before it is issued to the approving authority. The committee's final report shall be provided to the applicant and made available to the public.

After giving [30] days public notice, the approving authority shall hold public hearings to assist in its decision to approve a charter application.

If the application is found by the approving authority to meet [the criteria below], it may approve the application.

Option B: Single Source Approval With the Right of Administrative Appeal

Charter school applications shall be submitted to the local school board for approval. As the approving authority, the local board shall be responsible for oversight of the charter school it approves and for providing an initial determination of whether the school is meeting the terms of its charter.

Potential charter school applicants may engage in discussions with local school boards before submitting an application for approval to establish a charter school.

Charter school applications shall be submitted by [December 31] for schools to be established and prepared to admit students [on or before August two years later].

A local school board may limit the number of applications it will consider in any year but within [30] days after receiving an application must hold a public meeting to decide whether or not to consider it.

Within [90] days of receiving an application the local school board decided to consider, it must rule on whether to approve the application at a public meeting.

Each local school board shall form an accountability committee to review charter school applications the board decides to consider. The accountability committee's report to the local school board shall address the approval criteria below. The committee shall meet with the applicants in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report [30] days before it is issued to the local school board. The committee's final report shall be provided to the applicant and made available to the public.

After giving [30] days public notice, the approving authority shall hold public hearings to assist in its decision to approve a charter application.

If the application is found by the approving authority to meet the criteria below, it shall approve the application.

If the local board decides not to consider the charter application or not to approve the charter application, the applicant may submit a motion for appeal to the state board of education within [30] days of the local board's decision.

Except as provided below, the state board must accept the appeal of a charter school applicant whose application was considered but not approved by a local school board.

The state board may decide not to accept the appeal of a charter school applicant when a local school board decided not to consider that application because of the number of applications it had already decided to consider in that year, or because of the number of charter school applications approved in the last [3] years. The state board must decide whether to accept such an appeal at a public meeting held within 30 days of receiving the appeal.

Within [90] days of accepting an appeal the state school board must rule on whether to approve the application at a public meeting.

The state board shall form an accountability committee to review charter school applications. The accountability committee's report to the state board shall address the approval criteria below. The committee shall meet with the applicants in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report [30] days before it is issued to the state board. The committee's final report shall be provided to the applicant and made available to the public.

After giving [30] days public notice, the state board shall hold public hearings to assist in its decision to direct a local school board to approve a charter application.

If the state board finds that the application meets the approval criteria, it shall remand such decision to the local school board with instructions to approve the charter application. The decision of the state board shall be final and not subject to appeal.

Option C: Single Source Approval With the Right of Judicial Appeal

Charter school applications shall be submitted to the state board [of education] OR [for charter schools] for approval. As the approving authority, the state board shall be responsible for oversight of the charter school it approves and for deciding whether the school is meeting the terms of its charter.

Potential charter school applicants may engage in discussions with the state board before submitting an application for approval to establish a charter school.

Charter school applications shall be submitted by [December 31] for schools to be established and prepared to admit students [on or before August two years later].

The state board may establish reasonable limits on the number of charter school applications it will consider in any year, but must announce those limits by [June 31].

The state board shall form an accountability committee to review charter school applications the board decides to consider. The accountability committee's report to the state board shall address the approval criteria below. The committee shall meet with the applicants in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report [30] days before it is issued to the state board. The committee's final report shall be provided to the applicant and made available to the public.

After giving [30] days public notice, the state board shall hold public hearings to assist in its decision to approve a charter application.

> If the application is found by the state board to meet the criteria below, it shall approve the application.
>
> The state board's decision may be appealed in the state courts and reviewed to determine whether the state board's decision is supported by the facts. Decisions unsupported by the facts shall be remanded to the state board with orders to approve the charter application.

A fundamental objective of this model statute is to make the approval of charter school applications subject to an objective process. This section is, in part, intended to strictly limit the discretion contained in most state charter school statutes that allows approving authorities to deny applications to applicants who meet the specific statutory requirements for charter school status. Because a great deal of discretion has been removed from the considerations approving authorities are permitted to draw upon to decide on an application, this model statute contains no strong preference as to the approval process, beyond the general requirements of: providing interested parties with notice that an application has been received and will be considered by the approving authority, considering the application at a public hearing where the applicant and interested parties have a right to be heard, establishing a clear timeline within which a decision must be rendered, and offering an applicant more than one opportunity to gain approval.

This section also calls for the creation of an accountability committee to assist the approving authority in its approval and oversight functions. The statute is silent as to the size or membership of the committee, leaving it to the discretion of the approving authority to determine how it can best meet the requirements of the charter school statute. This committee will conduct a preliminary, fact-finding investigation of each application and a recommendation regarding approval. Charter school applicants will have the right to review and comment on the committee report and to meet with the committee during its investigation. Charter school applicants will also be permitted to engage in preliminary discussions with approving authorities and accountability committees to get a sense of the authorities' expectations and to compare alternative potential sponsors.

The model statute contains three alternative approval procedures. Option A allows a charter school applicant to seek approval from a number of independent sources. It is based on the system in Arizona and Michigan. Option B provides for a single source of approval, probably the local school board where the charter school would be located, with a right of appeal to a higher education authority, probably a state board or department of education. It is based on the Colorado and California statutes. Option C provides for a single source of approval, probably at the state level, such as the state board or department of education or a state board for charter schools. It is based on the Massachusetts statute. Whether an applicant's "second chance" for approval comes in the form of submission to another approving authority as in Option A, or appeal to an administrative agency or court, the applicant is entitled to a hearing on the facts.

In Options A and B, the authority reviewing the application for a second time is neither required nor, strictly speaking, allowed to defer to the judgment of the authority that made the first decision. It must consider the application de novo. In Option C, the appellate authority is permitted to review the facts but must determine whether the approving authority's decision can be supported by those facts. Option C does require the court to defer to the approving authority where its decision finds support in the facts. The standard of review in Options A and B reflects a sense that local school boards may be prejudiced against charter schools for parochial reasons. To promote the formation of charter schools, the model statute places the burden of proof in justifying its decision on the local board. The standard of review in Option C reflects a sense that state education agencies are more neutral decisionmakers. The applicant must show that the decision made by the state agency is not supported by the facts in the application or the record developed by the approving authority.

Given that the alternative procedures are relatively neutral in terms of an applicant's overall chances of receiving approval, a choice among the three may rest on other rationales. One consideration is that the approving authority is also responsible to assure the charter schools it approves actually implement the terms of their charters. Options A and B offer the advantage of spreading the responsibility and work of monitoring charter schools, but perhaps at the cost of non-uniform review due to differences in approach, interest, and oversight capabilities. A charter school is a medium-sized economic entity, as well as an innovative educational institution. The local school board will probably have to obtain personnel with expertise in these areas to staff the accountability committee that will support the approving authority in its approval and oversight functions. On the other hand, staff requirements to institute the charter school program should not be too demanding. The goal of the statute is to avoid rules and regulations and focus on performance. By tying charter approval and maintenance to objective standards, the statute should not lead to the creation of a large new bureaucracy. In addition, by distributing the approval and oversight functions to a number of local agencies (school boards and/or the other educational institutions listed in Option A) the two options should tend to promote diversity in the state's charter school system.

Options A and B also create a conflict of interest for the local school board—which controls the local school district and its centrally-directed schools, by charging it with the oversight of the district's chief competitor for public school students and funds—the charter school. Option A minimizes the effects of this conflict of interest by creating alternative sponsors to whom charter school organizers may turn for sponsorship if the district's oversight is overbearing. Option B also limits the effects to some extent by allowing school organizers to apply to any school board in the state, as long as they locate the school within the geographic confines of that district. So even under Option B, potential applicants can "shop around."

Option C centralizes the oversight of schools in some state education agency. This encourages the development of uniform review procedures and the creation of specialized approval and monitoring staffs. It also limits the conflict of interest problem discussed above, as the state agency, unlike the local school board, will operate no schools. Although a state department or board of education has a vested interest in public education generally, there should be no institutional reason why the agency would have a vested interest in the particular form of public schooling. Of course, there may be individuals in the state education agency who oppose the charter school concept, so a politicization of the review process cannot be ruled out. And a state board for charter schools would obviously tend to be biased in favor of the continuation of charter schools. Nevertheless, the fact that no state agency will actually run public schools in competition with charter schools should promote a more objective review of charter schools, but perhaps at the price of greater bureaucratization and less diversity in the charter school system.

The choice among imperfect options depends on the unique circumstances of the state considering the model statute. A choice among the three may rest on an analysis of the issues discussed above and also in the section below on the revocation procedures related to each option. The over-riding consideration in choosing among them should be a desire to promote objective application of the criteria for charter approval and revocation discussed in the sections below.

Approval Criteria

> *Charter school applications shall be approved if, after the exercise of due diligence and good faith, the approving authority finds that:*

This section on approval criteria is a core feature of the model statute. It represents an effort to balance the values of autonomy and accountability. It achieves a balance by relying on objective criteria to guide the approval process. This section does not entirely rule out discretion on the part of approving authorities; a certain amount of judgment is necessary in determining whether an application meets each criterion. But the section does rule out the use of any other criteria by an approving authority and requires it to exercise due diligence and good faith in making its determinations. This limits the discretion of approving authorities to a far more narrow set of concerns than existing charter school statutes. If an approving authority finds that an application meets the statutory requirements contained in this section, it must approve the charter. The approach promotes autonomy by focusing the approving authority's attention on objective factors essential to accountability. The approach supports accountability by requiring the applicant and approving authority to seriously consider those factors essential to the likely success of the school.

- *The individuals and entities submitting the application are reasonably qualified to operate a charter school and implement the proposed educational program;*

This first provision illustrates the basic approach of the section. The approving authority is required to determine whether the people and organizations applying to establish and operate a charter school are reasonably qualified to do so. Undoubtedly, a certain amount of judgment is required to make such a determination, but this does not mean that the approving authority's discretion is unlimited. The authority is required to research the background of the applicants and consider evidence of their success or failure in similar educational endeavors, one reason the model statute establishes the requirement for the accountability committee. And the authority must base its findings on good faith, it cannot simply find that well-qualified applicants are not reasonably qualified. Those approving authorities that try are likely to find their determinations overturned in the administrative or judicial appeals process. As experience with the implementation of the statute grows, the precise bounds of "reasonably qualified" will become a clearer guideline for both approving authorities and charter school applicants.

- *The chosen form of organization, identified in the articles of incorporation and by-laws, or the membership agreement, conforms with the relevant statutes;*

This provision requires the approving authority to find that an applicant's proposed system of self-government meets the requirements of the state's business corporations, cooperative, or non-profit corporations statutes. The expertise necessary to make this judgment does not typically reside with education agencies, hence the need to create a special accountability committee to support the approving authority and to staff that committee with certain specialized expertise.

- *The mission statement is consistent with the description of legislative intent and restrictions on charter school operations in this legislation;*

This provision requires that the approving authority review the application as a whole and make a good faith determination whether it meets the legislature's intentions in passing the charter school statute, and the restrictions on charter school operations.

Two sections concerning legislative intent are relevant, those concerning beneficiaries of the statute and the sources of potential charter school organizers envisioned by the legislature. The charter school statute is "intended to provide parents and students with improved measures of school performance and greater opportunities in choosing public schools within [and outside] their school districts, and to provide for a well-educated community" and "to encourage any person or [nonsectarian] entity that can meet the requirements of this legislation to form a charter school." The first objective is covered by the criteria of this section. The second objective is problematic if the legislation allows religious institutions to be affiliated with charter schools. If religious affiliation is permitted, then the approving authority must analyze the application in the context of the restrictions on sectarian practices.

The legislation contains five categories of restrictions on charter school operations. In addition to the prohibition on sectarian practices, a charter school may not charge tuition, restrict admissions except by lottery, displace students or teachers in the case of conversion, or be established to circumvent a desegregation order. Aside from the practical problems of distinguishing religious affiliation from sectarian practices, determining whether an application meets these criteria appear to be a relatively straightforward objective task.

The school's proposed educational program:

- *[identifies student performance standards, which meet or exceed one or more of the (following standards chosen by the applicant [named standards contained in the statute]) OR (standards identified by the [state board of education]), as measured by one or more of the means of assessing performance established for the selected pupil performance standards chosen by the applicant;]*

OR

- *[describes student performance standards which meet or exceed those set by the [state board of education], measured according to the same testing and portfolio requirements for students in other public schools;]*

This provision establishes what is essentially a ministerial task. Under either of the bracketed options, which parallel those in the provision above on student performance standards, the approving authority must certify that performance standards and means of assessment proposed by the school come from the list in the statute and/or one established by a state education agency.

- *The application describes a plan for evaluating pupil performance and procedures for taking corrective action in the event that pupil performance at the charter school falls below such standards which are reasonably likely to succeed;*

This provision is not a ministerial task. As with other provisions in this section, the approving authority's determination requires the exercise of due diligence and good faith. The approving authority must review the application to determine whether the proposed plans for assessing individual student performance and working with students are reasonably likely to succeed. This review involves research into experiences with like or similar assessment and intervention plans, an assessment of the applicability of those experiences to the situation of students likely to attend the proposed charter school, and judgments about the ability of the personnel proposed for the school to implement the proposed plan.

- *The application describes school performance standards, which meet or exceed [one of the following standards chosen by the applicant (named standards)] OR [those set by the state board];*

This is essentially a ministerial task. The approving authority must certify that school performance standards proposed in the application come from the list in the statute and/or one established by a state education agency.

- *The school's educational program, including curriculum and instructional strategies, has the potential to improve student performance;*
- *The plan for the school is economically viable, based on a review of the school's proposed budget of projected revenues and expenditures for the first [three] years, the plan for starting the school, and the major contracts planned for equipment and services, leases, improvements, purchases of real property, and insurance;*
- *The school's financial and administrative operations, including its annual audits, meet or exceed [the same standards, procedures, and*

requirements as a school district] OR [generally accepted standards of accounting and management];

- *The assessment of the school's potential legal liability, and the types and limits of insurance coverage the school plans to obtain, are adequate;*
- *The procedures the school plans to follow to discipline and dismiss students complies with state and federal law;*
- *The procedures the school plans to follow to assure the health and safety of students, employees and guests of the school comply with applicable federal and state health and safety laws and regulation;*

These provisions require the approving authority to pass judgment on the educational potential, financial feasibility, management procedures, and potential exposure to legal liability of the proposed charter school. They indirectly require the approving authority to assess the qualifications of the proposed school's organizers in various areas of school management and business planning.

Determining the proposed program's prospects for improving student performance is a judgment based on educational expertise, but approval decisions must be based on a broader range of considerations. The approving authority must research the history of like or similar schools or educational programs and the experience of the organizers in managing like or similar operations. Most of the above provisions require what are essentially business and legal judgments, suggesting that in order to make determinations based on due diligence, the approving authority needs access to financial, legal, business, accounting, and insurance expertise. Under the model statute, this expertise will be provided through the approving authority's accountability committee.

While judgments are involved, the range of discretion that can be exercised in making these determinations is bounded by professional standards and norms. For example, the design of the school's audit is governed by generally accepted standards of public accounting. The feasibility of the overall business plan might be judged on the basis of criteria that a bank's lending committee would apply in considering whether to lend the school start up funds to be paid out of anticipated revenues. Legal liability, risk management, and insurance coverage can be judged against legal principles, industry standards, and underwriting methodologies. Disciplinary procedures can be subjected to legal assessments. Even the potential success of a proposed educational program can be judged by reference to the performance of like or similar programs measured by standards generally accepted or commonly used by researchers involved in educational assessment.

- *[The application contains a provision that the school will comply with all other state law relevant to public bodies and with federal law applicable to public bodies or school districts;]*

This optional provision parallels another in the section above on the charter school application, and should only be included in legislation if that provision is as well. It establishes a ministerial requirement that the approving authority certify that the application contains a provision that the charter school will comply with other relevant law.

- *Applicants proposing the conversion of a public school currently operated by a school district to charter school status provide adequate evidence that the proposed plan received the approval of [66]% of the teachers at that school in a secret ballot and [66]% of the parents of students enrolled in that school who, with [30] days notice in two local newspapers, attended a meeting held for the specific purpose of voting on the proposed conversion.*

The final provision is also ministerial in nature. In the case of conversion, the approving authority must certify that super-majorities of teachers and parents of children at the school seeking charter status separately voted to do so.

REPORTING AND OVERSIGHT

This part affects the accountability of an existing charter school, particularly in the area of information-gathering. It includes requirements for annual audits and reports on school programs and finances, the right of state agencies to review the same, and the need for regular reports by state education agencies on the charter school program overall.

Annual School Audit and Report

> *By August 1, the school shall produce an annual report for the school year ending the previous [May, June], which shall discuss the school's progress in meeting student and school performance standards and contain a financial*

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> *statement setting forth by appropriate categories the school's revenues and expenditures and assets and liabilities.*
>
> *The annual report shall be submitted to the approving authority, [the state board of education, the local school board, the local public library system,] employees of the school, and parents of students attending the school; provided to parents considering enrolling their children in the school; and made available to the public. The school shall distribute the report free of charge.*

This section contains two provisions regarding a charter school's obligation to report on its operations. The first provision requires the school to produce an annual report on the previous school year by August 1. That date gives parents a reasonable opportunity to use up-to-date information when they decide where they want to enroll their children in school. The report must contain information on student and school performance, expressed in terms of the standards and means of assessment contained in the school's charter. The report also must contain financial data similar to that provided by publicly-held corporations in their annual report to the shareholders (i.e., an income statement and a balance sheet). The second provision requires the school to submit the report, without charge, to its approving authority, the local school board, the local library, and parents of children at the school, and to make the report available to the public at large.

Government Audits

> *The [state department of education, board of education, state auditor] and the approving authority may conduct financial, programmatic, or compliance audits.*

This section assures that public authorities have unobstructed access to the school and its records in order to carry out their responsibilities to oversee the implementation of the public education function and the expenditure of public funds.

State Agency Reports on the Charter School Program

> *Every [3] year[s], the [state board of education] shall prepare a report for the governor and the legislature on the success or failure of charter schools and propose changes in state law necessary to improve or change the charter school program. The report shall be available for public review and comment [90] days before it is released. The report shall be made available to the public.*

This section requires a state education agency to monitor and report on the charter school program on a regular basis, to make the report available for review and comment by charter schools and members of the public before it is officially released, and to make the final report publicly available.

CHARTER REVOCATION

The final part of the model statute also concerns the accountability of an established charter school, and specifically the means of enforcing charter school obligations. This part incorporates the process and criteria involved in terminating a charter school or invoking less drastic sanctions.

Revocation Process

The options in this section correspond to the options in the section above on approval procedures.

Option A: Alternative Sources of Approval
AND
Option C: Single Source Approval With the Right of Judicial Appeal

> The approving authority shall be responsible for oversight of the charter schools it approves and shall have sole authority to determine whether the school is meeting the terms of its charter.
>
> The approving authority may warn a charter school of potential violations of its charter before submitting the charter to formal review to determine whether the charter school is violating the terms of its charter and whether the charter will be revoked.
>
> The accountability committee shall review potential charter violations. The accountability committee's report to the approving authority shall address the revocation criteria below. The committee shall meet with the applicants in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report [30] days before it is issued to the approving authority. The committee's final report shall be provided to the applicant and made available to the public.

If the accountability committee reports a probable violation of the charter to the approving authority, the approving authority shall hold public hearings to assist in its decision to revoke a charter application, after giving the charter school [30] days notice.

If the approving authority determines that the charter has been violated, it may revoke the charter and manage the school directly until alternative arrangements can be made for students at the school or place the school on a probationary status subject to terms determined by the approving authority which are directly relevant to the violation. Charters shall be revoked only where probationary actions are unlikely to succeed.

The approving authority's decisions shall be subject to judicial review and shall be upheld unless arbitrary and capricious, or based on clear error.

Option B: Single Source Approval With the Right of Administrative Appeal

The approving authority shall be responsible for oversight of the charter schools it approves and shall provide an initial determination of whether the school is meeting the terms of its charter.

The approving authorities may warn charter schools of potential violations of its charter before submitting the charter to formal review to determine whether the charter school is violating the terms of its charter and whether the charter will be revoked.

The accountability committee shall review potential charter violations. The accountability committee's report to the approving authority shall address the revocation criteria below. The committee shall meet with the applicants in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report [30] days before it is issued to the approving authority. The committee's final report shall be provided to the applicant and made available to the public.

If the accountability committee reports a probable violation of the charter to the approving authority, the approving authority shall hold public hearings to assist in its decision to revoke a charter application, after giving the charter school [30] days notice. The school shall be given the opportunity to respond to the accountability committee's report at that meeting. Members of the public shall be given the opportunity to comment at the meeting.

> If the approving authority determines that the charter has been violated, it may revoke the charter and manage the school directly until alternative arrangements can be made for students at the school or place the school on a probationary status subject to terms determined by the approving authority which are directly relevant to the violation(s). Charters shall be revoked only where probationary actions are unlikely to succeed.
>
> If the approving authority decides to revoke the school's charter or place the school on probationary status, the applicant may submit a motion for appeal to the state board of education within [30] days of the local board's decision.
>
> Within [30] days of receiving an appeal the state school board must rule on whether to uphold or reverse the approving authority's decision at a public meeting.
>
> The accountability committee of the state board shall review the alleged violations of the charter. The accountability committee's report to the state board shall address the revocation criteria [See below]. The committee shall meet with the applicants in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report [30] days before it is issued to the state board. The committee's final report shall be provided to the applicant and made available to the public.
>
> After giving the school [30] days notice, the state board shall hold public hearings to assist in its decision to direct a local school board to withdraw or modify the approving authority's decision. The school shall be given the opportunity to respond to the accountability committee's report at that meeting. Members of the public shall be given the opportunity to comment at the meeting.
>
> The state board shall make its findings and may remand its decision to the local school board with instructions to withdraw the charter revocation or modify the terms of probation. The decision of the state board shall be final and not subject to appeal.

This section contains two alternative procedures for the review and revocation of school charters. The first corresponds with Options A and C under the section on approval procedures. The second is associated with the procedure for approval contained in Option B. Both alternatives make the approving authority responsible to see that the school operates in accordance with the terms of its charter, provide the charter school with notice of potential charter violations, give the accountability committee responsibility for conducting an investigation into charter school operations, grant the charter school numerous

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opportunities to explain and defend its practices, establish a clear time line for decision, require approving authorities to base their decisions on specific objective criteria, allow an approving authority to terminate a charter and to take over the school until alternative arrangements can be made for the students, contain sanctions short of charter termination, require that those sanctions be directly relevant to the violations, allow revocation only where probationary actions are unlikely to succeed, and provide charter schools with the right to appeal an approving authority's decision.

The two alternatives differ in their standard of review of approving authority decisions. The alternative provision covering Options A and C establishes a standard that tends to favor upholding the approving authority. Unless the approving authority's finding is arbitrary and capricious, or based on clear error, it will stand. Options A and C reflect a legislative decision to lodge the responsibility for charter school approval and revocation at a single level of the executive branch. Courts are not experts in education, Options A and C reflect a legislative decision that state education institutions have the necessary expertise, and that courts should only second guess them where an abuse or error is obvious. Option B allows a state education agency to review the decisions of a local school board de novo. As with the approval process, the need to overcome the conflict of interest inherent in a local school board's power to approve charter schools argues for placing the burden of proof on the local board in any appeal of its decision to revoke a charter.

Revocation Criteria

> *Approved charters shall be subject to revocation or probation, after the exercise of due diligence and good faith, only for the following reasons:*

Like the section on approval criteria, this section on revocation criteria reflects values at the core of the model charter school statute. The section does not eliminate the exercise of discretion by approving authorities. The section does rule out the use of any other criteria by an approving authority and requires it to exercise due diligence and good faith in making its determinations. This limits the discretion of approving authorities to a far more narrow set of concerns than existing statutes. If an approving authority finds that a potential violation of the charter does not rise to the standards required in this section, it cannot revoke the charter. The approach promotes autonomy by focusing the approving authority's attention on objective factors essential to accountability. The approach supports accountability by clearly identifying the grounds for charter revocation.

- *The individuals and entities submitting the application have committed a material fraud on the approving authority;*

This provision permits the approving authority to terminate a charter if the applicants materially misrepresent themselves or anything in their charter school proposal (i.e., if they falsify information contained in the application that served as a basis of the approving authority's decision to grant the charter).

- *The school fails to achieve the student or school standards established in its charter;*
- *The school fails to implement the charter's plan for evaluating pupil performance or for taking corrective action in the event that pupil performance at the charter school falls below such standards;*

These provisions concerning the charter school's educational program are central to the model statute. Charter approval is based in large part on representations by the applicant concerning the effectiveness of the proposed school's curriculum and instructional strategy reflected in the areas of student and school performance. Schools that fail to meet the performance standards, or to carry out the plans for evaluating student performance and intervening with problem students, can have their charters revoked. This gives the approving authority a basis for exercising its powers under the section on revocation procedures to revoke the charter and manage the school or place the school on a probationary status subject to terms determined by the approving authority which are relevant to the violations. This helps to maintain charter school accountability after a charter has been approved.

- *The school is not economically viable, based on a review of the school's actual and projected budgets of revenues and expenditures for the first [three] years, implementation of the plan for starting the school, and the major contracts planned for equipment and services, leases, improvements, purchases of real property, and insurance;*
- *The school's financial and administrative operations, including its annual audits, do not meet [the same standards, procedures, and requirements as a school district] OR [generally accepted standards of financial management];*
- *The types and limits of insurance coverage obtained by the school are not adequate;*

- *The procedures the school follows to discipline and dismiss students do not comply with state and federal law;*
- *The procedures the school follows fail to assure the health and safety of students, employees and guests of the school or do not to comply with applicable federal and state health and safety laws and regulations are adequate;*
- *The school does not comply with all other relevant state law relevant to public bodies or with federal law applicable to school districts.*

Although perhaps less central to the statute than the provisions on a school's educational program, these provisions concerning the school's economic viability, financial and administrative operations, insurance coverage, health and safety, and compliance with the law are still quite important to the goal of maintaining accountability after charter approval. If the school proves to be financially unfeasible, if its procedures fail to maintain adequate control over the school's financial and administrative operations, if the school is not adequately covered for the purposes of insurance, or if it does not operate according to the law, its charter may be revoked or the school placed on probationary status, subject to terms directly related to the violations of the charter.

It is less obvious, but equally true, that the provisions of this section are also important to charter school autonomy after charter approval. Because they establish only objective grounds for an approving authority to exercise its powers to directly supervise the school, the revocation criteria in this section do not provide a basis for highly intrusive or extensive regulation of ongoing school operations. Only the dysfunctional school can be subject to micro-management and, according to the section on revocation, the terms under which such a school can be subject to direct supervision only extend to matters directly relevant to the violations of the charter. The terms of probation for a school that fails to meet generally accepted accounting procedures must be confined to accounting procedures. A finding that a school has violated this portion of its charter cannot justify the approving authority's imposition of a change in that school's curriculum.

APPENDIX

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A. COMPARISON OF STATUTORY PROVISIONS AFFECTING AUTONOMY

THE NATURE AND SCOPE OF AN INDIVIDUAL CHARTER SCHOOL'S OPERATION

Legal Status, Powers, and Authorities

A Massachusetts charter school has a legal status entirely independent of the school district in which it is located. It is "a public school which operates under a charter granted by the secretary of education, which operates independently of any school committee and is managed by a board of trustees." [237] It is "a body politic and corporate with all powers necessary and desirable for carrying out its charter program." [238] It has all the powers of any business corporation formed in the state which are not inconsistent with the charter school act,[239] and may incorporate as a non-profit corporation. [240] The trustees are "deemed public agents authorized by the commonwealth to control the charter school." [241] A charter school may "sue or be sued...to the same extent and upon the same conditions" as a town; it is "considered the public employer" for the purposes of the state's public sector collective bargaining laws; and it may acquire real property, determine its budget and curriculum, receive and disburse funds for school purposes, "incur temporary debt in anticipation of

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[237] MA ch. 71, § 89.

[238] MA ch. 71, § 89.

[239] MA ch. 71, § 89.

[240] Although neither the Massachusetts statute nor the secretary of education requires charter school organizers to form not-for-profit corporations under Section 180 of the Massachusetts General Laws to operate the school, the General Counsel to the Secretary of Education has recommended that applicants indicate that they intend to do so, and has considered recommending that it become a formal requirement. In addition to providing predictability in many aspects of the school's organization and operation, nonprofit status offers important financial benefits. It limits the liability of charter schools' directors and officers to $100,000 per claim for negligence torts (liability for intentional torts is unlimited), reducing the school's insurance costs. Nonprofit status is also necessary to receive tax exempt status under Section 501(c) (3) under the Internal Revenue Code (which makes donations to the school tax-deductible to the contributor.) In the absence of formation under Section 180, a Massachusetts charter school organization will be governed by the charter school statute itself. In these cases it is likely that nonprofit law will be imported to interpret the charter school law. To date all applicants have followed the General Counsel's advice. Author's notes on remarks of General Counsel at October 22, 1994 conference in Worcester, Massachusetts, Charter Schools: A Grassroots Approach to Education Reform, morning session on public laws applicable to charter schools.

[241] MA ch. 71, § 89.

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receipt of funds," and contract for services, equipment and supplies."[242] As will be discussed below, a Massachusetts charter school may also limit enrollment to "specific...areas of focus of the school, such as mathematics, science or the arts" and "establish reasonable academic standards as a condition for eligibility" for admission.[243] In short, a Massachusetts charter school is largely independent of outside control over its strategic direction and day-to-day operations.

Minnesota also offers its "outcome-based schools" a high degree of autonomy. An individual school is organized under state laws governing cooperatives or non-profit corporations, which give it the status of a legal person.[244] It "is a school district for the purposes of tort liability,"[245] and is treated and paid as a school district for the purpose of receiving state funding for public education, and any other revenues or grants.[246] The board of directors of the school signs the school contract with sponsoring authority (i.e., the local school board or the state board of education).[247] It may sue or be sued,[248] lease the school's site,[249] "decide matters related to the operation of the school, including budgeting, curriculum and operating procedures,"[250] and is a public employer for the purpose of collective bargaining.[251] The charter school must hire licensed teachers for teaching positions, but may hire them individually or by contract.[252] Instead of pursuing the collective bargaining option, the board of directors may contract with a group of instructors to provide instruction as a cooperative.[253] It may also employ persons for duties other than teaching, discharge teachers and non-licensed employees, and contract for other services.[254] A Minnesota charter school also has some capacity to limit admissions—to people able to participate in the state's high school graduation incentives program,[255] or to residents of areas where minorities are in the majority, so long as the school reflects the area's diversity.[256]

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[242] MA ch. 71, § 89.

[243] MA ch. 71, § 89.

[244] MN § 124.064, Subd. 4.

[245] MN § 124.064, Subd. 8.

[246] MN § 124.248, Subds. 1-4 (a).

[247] MN § 124.064, Subd. 5.

[248] MN § 120.064, Subd. 23.

[249] MN § 120.064, Subd.16.

[250] MN § 120.064, Subd. 11.

[251] MN § 120.064, Subd. 20.

[252] MN § 120.064, Subd. 11.

[253] MN § 120.064, Subd. 4 (c).

[254] MN § 120.064, Subd. 11.

[255] MN § 120.064, Subd. 9 (2).

[256] MN § 120.064, Subd. 9 (4).

The California statute is vague but appears to offer the individual charter school the option of substantial autonomy. For funding and other purposes a charter school is deemed a school district.[257] California charter schools may accept gifts from private persons or organizations to establish or operate the school.[258] Most other dimensions of autonomy appear to be subject to negotiation.[259] For example, while the statute does not specify a charter school's legal status, schools have continued "as unincorporated entities within their...district,...non-profit corporations that are largely or entirely independent of the...district, and...organized as a Joint Powers Authority pursuant to California Government Code provisions."[260] The California charter school does not have the capacity to limit admissions.[261]

The Colorado statute also provides the charter school with a distinctive, but potentially limited, legal personality. On the one hand, "[a] charter school shall be a public school which is part of the school district in which it is located."[262] On the other, the school is party to a negotiated contract between the school and the local board of education containing the terms and conditions under which the school will operate, and which constitutes the school's charter.[263] The charter school operates free from school district policies and state regulations as specified in the contract.[264] It also negotiates with the school district for its share of the district's budget[265] and for "[a]ll services centrally or otherwise provided by the district including, but not limited to, food services, custodial services, maintenance, curriculum, media services, libraries, and warehousing."[266] Through its governing body, the school is "responsible for its own operation, including, but not limited to, preparation of a budget, contracting for services, and personnel matters."[267] The school may accept gifts[268] and "negotiate with...any third party for the use of a school building and grounds, the operation and maintenance thereof, and the provision of any service, activity, or undertaking which the charter school is required to perform in order to carry out the educational program described in its charter."[269] The school's legal liability and status vis a vis school employees are subject to negotiation with the local board.[270] To a great extent, a Colorado charter school's legal status is a matter for negotiation. However, Colorado charter schools cannot restrict the eligibility of any student in the district.[271]

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[257] CA § 47612 (b), (c).

[258] CA § 47603.

[259] See generally, Charter School Implementation Challenges, Working Paper #1, *Redesigning Education: Supporting the Charter Schools Movement* 7-10, BW Associates, Berkeley, California, January 1993.

[260] Charter School Implementation Challenges, Working Paper #1, *Redesigning Education: Supporting the Charter Schools Movement* 8, BW Associates, Berkeley, California, January 1993. However, other schools "have yet to explore these issues or are leaving them unanswered (either intentionally, or by default.) Id.

[261] CA § 47605 (d).

[262] CO § 22-30.5-102 (2).

[263] CO § 22-30.5-105 (1).

[264] CO § 22-30.5-104 (2).

[265] CO § 22-30.5-112 (2).

[266] CO § 22-30.5-104 (2) (b).

[267] CO § 22-30.5-104 (7) (a).

[268] CO § 22-30.5-112 (4).

Arizona's statute does not explicitly define a charter school's legal position. The legislation gives it the power to sue, be sued and contract.[272] The statute's provision concerning vacant buildings for potential use by charter schools implies that charter schools may purchase or lease real property.[273] The further extent of a charter school's legal authority appears to be defined by the terms of its charter. A charter school is "a public school established by contract with a district governing board, the state board of education, or the state board for charter schools."[274]

The legal status of a charter school is not specifically addressed in the Kansas statute. The extent of an individual school's autonomy is determined by the terms of its charter.[275] These terms are contained in the petition to establish a charter school and must be approved by the local and state boards of education.[276] At least one term suggests that the school's autonomy is circumscribed. A charter petition must include "a description of qualifications to be met by persons employed by the district for assignment to the charter school,"[277] implying that the school is not an independent employer. On the other hand, the charter petition must describe the "terms and conditions of employment in the charter school," suggesting that the school may be able to obtain some of the powers of an employer.[278] Other terms that directly affect autonomy include the description of the school's "educational program,"[279] the "means of ensuring accountability to the (local) board of education,"[280] the "manner of pupil participation in the Kansas assessment program,"[281] the relationship of certified employees to the district on termination of the charter or their decision to withdraw from a charter school,[282] and the proposed budget.[283] Of key importance are the petitioner's specific requests for waivers from local board policies, state board rules and regulations, and state statutory requirements "to facilitate operation of the school."[284] Consequently, in Kansas, a charter school's autonomy is almost entirely a matter of negotiation among the charter school organizers, the local board and the State Board of Education.

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[269] CO § 22-30.5-104 (7) (b).
[270] CO § 22-30.5-106 (j), (i).
[271] CO § 22-30.5-104 (3).
[272] AZ § 15-183 (H).
[273] AZ § 15-189.
[274] AZ § 15-101 (3).
[275] KS § 4 (a).
[276] KS § 4 (e)-(f).
[277] KS § 4 (c) (6).
[278] KS § 4 (c) (12).
[279] KS § 4 (c) (1).
[280] KS § 4 (c) (5).
[281] KS § 4 (c) (11).
[282] KS § 4 (c) (13).

The autonomy of Michigan's charter schools, which are called "public school academies," is somewhat circumscribed. They are public schools for the purposes of Section 2 of Article VIII of the state constitution and school districts for the purposes of Section 11 of Article IX.[285] A Michigan charter school is a body corporate and a governmental agency, and has the power to "sue and be sued in its name," "acquire and take real and personal property for educational purposes by purchase, gift, grant, devise, or bequest, and may sell and convey the property as" the school's interests require.[286] Michigan charter schools are organized under the state's non-profit corporation law and managed by boards of directors.[287] The school negotiates with an authorizing body, which approves the contract.[288]

In the area of labor relations, the independence of charter schools authorized by local school districts is seriously limited by the requirement "that employees...will be covered by the collective bargaining agreements that apply to other employees of the school district employed in similar classifications in schools that are not [charter schools]."[289] The school is authorized "to employ or contract with personnel as necessary" for the school's operation, but only with the approving authority's approval.[290] For funding purposes, the approving authority is the charter school's "fiscal agent,"[291] but must turn the funds over to the school. The statute does not discuss matters of legal liability.

The autonomy of a Wisconsin charter school is even more circumscribed. It "is an instrumentality of the school district in which it is located and the board of that school shall employ all personnel for the charter school."[292] Under this statute the "school board shall contract with the person" who is seeking to establish the school "to operate the school as a

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[283] KS § 4 (c) (15)

[284] KS § 4 (c) (14).

[285] MI § 501 (1).

[286] MI § 501 (1).

[287] MI § 502 (1).

[288] MI §§ 502, 503.

[289] MI § 502 (3) (h).

[290] MI § 506.

[291] MI § 507.

[292] WI § 118.40 (7).

charter school."[293] The liability of the school and school district is subject to negotiation between the board and the person seeking to establish the school.[294]

Under Missouri's legislation, "the management of the [charter] school shall be vested in a five-member management team."[295] The full range of powers of this team is not entirely clear but, at a minimum, it has responsibility for "[s]taffing and personnel decisions...provided that the certified staff shall be paid according to the salary schedule adopted by the district."[296] Moreover, "[a]ll laws concerning teacher contracts" shall continue in force.[297] Missouri has no statute allowing collective bargaining in the public sector, but this suggests that the management team is the public employer of teachers at the school. In other areas, the team has whatever powers the State Board of Education is prepared to grant by waiving "such rules and regulations as it may determine."[298]

The autonomy of charter schools in New Mexico is considerably more limited. According to New Mexico's legislation, "'charter school' means an individual school within a school district, authorized by the state board to develop and implement an alternative educational curriculum and authorized by law to develop and utilize a school-based budget."[299] However, the budget must be "submitted to the local school board for approval or amendment" and is then submitted to the State Department of Education by the board.[300] The school board also controls the charter school's accounts.[301] The statute contains no discussion of the charter school's status in labor relations or tort liability.

The status of charter schools in Georgia is problematic. Georgia's legislation does not address the charter school's role in labor relations or tort liability. Nor does it discuss the local school's funding or control over funds.[302] Although the charter school is considered party to a contract between it, the local board of education and the state board, the statute characterizes a charter school as a "public school under the management and control of a local board" of education."[303] This wording implies that the school is not independent of the local board. However, as discussed below, the Georgia legislation assumes a blanket

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[293] WI § 118.40 (2) (a).

[294] WI § 118.40 (1m) (b) (15).

[295] MO § 18.2 (1).

[296] MO § 18.3.

[297] MO § 18.3.

[298] MO § 18.5.

[299] NM § 22-8A-2 (A).

[300] NM § 22-8-6.1.

[301] NM § 22-8-15 (B), (C).

[302] GA § 22-2-255 (b) (4) (limited relaxation of statutory expenditure controls).

[303] GA § 22-2-255 (b) (1)-(4).

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exemption from the state's education code unless otherwise specified in the charter school statute.[304]

Exemptions

California has adopted a blanket waiver of provisions governing other public schools. With the exception of the provisions of its charter and the requirement to assure that its teachers will remain within the state retirement system, a California charter school "is otherwise exempt from the laws governing school districts."[305] Wisconsin also offers a blanket exemption. "Except as otherwise explicitly provided, chs. 115 to 121 (of the state education code) do not apply to charter schools."[306]

Arizona and Minnesota have also adopted a broad approach to exemptions, but one which may leave some scope for bargaining between those organizing the school and the approving authorities. The Minnesota statute states that "Except as otherwise provided in this section, an outcome-based school is exempt from all statutes and rules applicable to a school board or school district, although it may elect to comply with one or more provisions of statutes or rules."[307] Arizona also provides what appears at first glance to be a blanket exemption. "[E]xcept as provided in this article and in its charter, (a charter school) is exempt from all statutes and rules relating to schools, governing boards and school districts."[308] Given the local and state boards' power to withhold approval, organizers in Minnesota and Arizona may find it beneficial to "elect" to comply with certain requirements.[309]

Approving authorities in California and Wisconsin have similar powers which translate into bargaining leverage over charter terms and hence some de facto control over waivers, so the scope of exemptions is probably a matter of negotiation in those states as well. Nevertheless, the legislation in these states seems to be based on an assumption favoring exemptions.

Georgia's legislation appears to assume that each exemption will be negotiated. The statute requires that each school charter contain "[a] provision to exempt the school from state rules, regulations, policies and procedures and from other provisions of this title, unless otherwise specified."[310] However, the school charter is defined in part as a contract that "will exempt a school from state and local rules, regulations, policies, procedures, and from the provisions of this title (i.e., the title of the state code dealing with education) according to the terms of the contract."[311] The statute appears to require local as well as state board approval of the charter,[312] which seems to imply that exemptions must be negotiated between the school and the state and local school boards, rather than assumed. However, the wording is less clear than in the Colorado statute and could plausibly support a blanket exemption.

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[304] GA § 22-2-255 (b) (1), (f) (5).

[305] CA § 47610.

[306] WI § 118.40 (7) (b).

[307] MN § 120.064, Subd. 7.

[308] AZ § 15-183 (D) (5).

[309] MN § 120.064, Subd. 3; AZ § 15-183 (C).

[310] GA § 22-2-255 (f) (5)

The Massachusetts statute is not entirely clear on the matter of exemptions. Charter schools' status is granted by the state secretary of education, and are treated like independent school districts, so they are not subject to the rules and regulations of the district in which they are located. According to the legislation, the school "shall be a body politic and corporate with all the powers necessary and desirable for carrying out its charter program, including, but not limited to the "powers described in the subsection above."[313] In addition, "[t]he charter school shall operate in accordance with its charter and the provisions of law regulating other public schools," with certain enumerated exceptions regarding employee rights and financial arrangements for students with special needs.[314] The net result of these provisions appears to be, first, the statute gives charter schools the powers discussed above. Second, the statute requires charter schools to comply with laws regulating other public schools—these cannot be waived. Third, those rules and regulations under the control of the secretary of education would seem to remain subject to waiver, and thus to negotiation between the secretary and the charter school organizer. What is not clear is the status of powers "necessary and desirable" to a charter school's program, not contained in the enumerated list of powers, not contrary to laws applicable to other public schools, but not under the secretary's control.

The other states take a less expansive view of exemptions and clearly consider them to be subjects for negotiation between the organizers and the approving authority. The Colorado statute allows a potentially unlimited scope for exemptions, but requires that they be affirmatively granted. "Pursuant to contract, a charter school may operate free from specified school district policies and state regulations."[315] Missouri includes a similar formulation. "The state board of education shall waive, for participating schools, such rules and regulations as it may determine."[316] Kansas requires that all exemptions from "school district policies, state board of education rules and regulations, and statutory requirements"[317] be approved by both the local school board and the state board of education.[318]

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[311] GA § 22-2-255 (b) (1).

[312] GA § 22-2-255 (c) (1), (g).

[313] MA ch. 71, § 89.

[314] MA ch. 71, § 89.

[315] CO § 22-30.5-104 (2).

[316] MO § 18.5.

New Mexico offers only a narrow range of negotiable exemptions. The general rule, with limited exceptions, is that "a charter school shall comply with all provisions of the Public School Code...provided that the charter school may request and the state board may grant a waiver of certain provisions...for the purpose of operating the charter school. The state board may grant waivers...for the purpose of providing class size and structure flexibility, alternative curriculum opportunities and alternative budget opportunities."[319]

The Michigan statute does not discuss exemptions. The statute implies that a charter school's curriculum, pedagogy, school calendar, and day schedule are subject to negotiation.[320] The legislation also implies that the exemptions are limited to those that have a basis in the charter school statute. The statute requires that a charter school contract application contain an "agreement" stating that the school "will comply with the provisions of this part (on public school academies) and, subject to the provisions of this part, with all other state law applicable to public bodies and with federal law applicable to public bodies and public schools."[321]

Restrictions

Tuition. In keeping with the intent that charter schools be part of the public school system, the legislation generally prohibits such schools from charging tuition.[322] Arizona's charter school statute is silent on the matter.

Private, Religious, and For-Profit Schools. Charter school statutes generally prohibit private and religious schools from making use of the statute. A majority prohibit for-profit charter schools. Such restrictions are implicit in the Georgia and New Mexico statutes, which only permit conversion of existing public schools to charter schools.

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[317] KS § 4 (c) (14).

[318] KS § 4 (e), (f).

[319] NM § 22-8A-6.

[320] MI §§ 502 (3) (d), 503 (4).

[321] MI § 502 (g).

[322] CA § 47605 (d); CO § 22-30.5-104 (5); KS § 4(d) (3); MA ch. 71, § 89; MN § 120.064, Subd. 8 (e); WI § 118.40 (4) (b) (1); MI § 504 (2).This prohibition is implicit in Georgia's and New Mexico's statutes, which only permit the conversion of existing public schools to charter schools. It is also implicit in the Missouri pilot program legislation, which calls for school district to volunteer sites.

California's legislation states that "[n]o charter shall be granted...that authorizes the conversion of any private school to a charter school,"[323] and establishes that charter schools shall be non-sectarian."[324] Colorado requires that "[a] charter school shall be a public, non-sectarian, non-religious, non-home-based school,"[325] and prohibits the conversion of private and non-public home-based schools.[326] Wisconsin prohibits conversion of private schools,[327] and requires that a charter school "[b]e nonsectarian in its programs, admissions policies, employment practices, and all operations,"[328] but does not explicitly rule out profit-making schools. Missouri implicitly rules out religious affiliation by requiring that the schools be drawn from existing district schools demonstrating above average, average, and below average performance.[329] In addition, the statute prohibits "for-profit corporations" from participating in the program.[330]

In Massachusetts, "[p]rivate and parochial schools shall not be eligible for charter school status,"[331] although "private colleges, universities, museums or other similar entities" may participate in the formation of a charter school.[332] This would appear to allow some room for participation by private colleges with a religious affiliation. In addition, charter schools may be run on a for-profit basis—"a business or corporate entity" may submit an application to establish a charter school.[333] Subject to approval by the secretary of education, a charter school's board of directors may also "procure substantially all educational services under contract with another person," including a for-profit business.[334]

Under the Kansas statute, charter schools must be non-sectarian,[335] but it appears that they can be organized by for-profit entities. The section on legislative intent explicitly mentions "educational services contractors," as potential charter school organizers within the scope of the act.[336] The legislature's intention is underscored by the section on the process of obtaining a charter, which also mentions "educational services contractors" as parties eligible to submit a petition to establish a charter school.[337] The statute does not explicitly rule out private school petitions for charter school status, but it does not identify private schools as potential petitioners, and the implication in the statute that charter school teachers would be district employees seems to make the option impracticable.[338]

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[323] CA § 47602 (b).
[324] CA § 47605 (d).
[325] CO § 22-30.5-104 (1).
[326] CO § 22-30.5-106 (2).
[327] WI § 118.40 (3) (c).
[328] WI § 118.40 (4) (a) (2).
[329] MO § 18.2 (3).
[330] MO § 18.2. (2).
[331] MA ch. 71, § 89.
[332] MA ch. 71, § 89.
[333] MA ch. 71, § 89.
[334] MA ch. 71, § 89.
[335] KS § 2.
[336] KS § 1.

An Arizona charter school must be "nonsectarian in its programs, admission policies and employment practices and all other operations."[339] The statute does not appear to rule out affiliation with for-profit institutions. Nor does it seem to prohibit affiliation with a private school, as an approving authority may "contract with a public body, private person or private organization for the purpose of establishing a charter school."[340]

Minnesota prohibits the establishment of charter schools affiliated with non-public sectarian schools or religious institutions, but the legislation appears to allow affiliation with private non-sectarian schools and institutions.[341] So far it is the only state to do so. But like Wisconsin, Minnesota requires that a charter school "[b]e nonsectarian in its programs, admissions policies, employment practices, and all operations."[342] Minnesota also requires that charter schools be established as non-profit corporations or cooperatives.[343] Unlike a non-profit corporation, which prohibits the distribution of any capital surplus to members, in a cooperative the surplus (i.e., profit) is passed through to the members. Therefore, the Minnesota statute allows the charter school to operate on a for-profit basis. Minnesota also allows the school to contract with a cooperative for its teaching services.[344]

In theory, Michigan does not entirely rule out religious affiliation. Its statute reads: "To the extent disqualified under the state or federal constitution, a public school academy shall not be organized by a church or other religious organization or have any organizational or contractual affiliation with or constitute a church or other religious organization."[345] The statute does not mention affiliation with private nonreligious schools,[346] but does require charter schools to be organized as non-profit corporations.[347]

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[337] KS § 4 (b).

[338] KS § 4 (c) (6)

[339] AZ § 15-183 (B).

[340] AZ 15-183 (B).

[341] MN § 120.064, Subd. 8 (c). The second charter school authorized was a Montessori school, teaching grades K-6, which converted from private status in March 1993. Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative* 2, Morrison Institute for Public Policy, School of Public Affairs, Arizona State University, Tempe, AZ 85287-4405, October 1993.

[342] MN § 120.064, Subd. 8 (c).

[343] MN § 120.064, Subd. 4 (a).

[344] MN § 120.064, Subd. 4 (c).

[345] MI § 502 (1).

Discrimination in Admissions. Unlike most legislation, the Kansas statute does not contain a list of reasons that charter schools cannot invoke in determining admissions. Instead, the act deals with discrimination in positive terms, requiring that a charter school's student body "be reasonably reflective of the racial and socio-economic composition of the school district as a whole."[348] The act also requires petitioners to explain their proposed "criteria for admission of pupils, including a description of the lottery method to be used if too many pupils seek enrollment in the school.[349] Thus, specific admissions criteria are a matter for negotiation between the charter school applicant and the approving authority. The statute looks only to the results of whatever criteria are applied.

The Massachusetts statute states that its charter schools "shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need or proficiency in the English language, and academic achievement."[350] However, they may "limit enrollment to specific...areas of focus of the school, such as mathematics, science or the arts" and may also "establish reasonable academic standards as a condition for eligibility" for admission.[351] While the school is open to all students in the state on a space available basis, students who reside in the town or city where the school is located will be given preference.[352] Massachusetts charter schools shall admit by lottery in the event of over-enrollment.[353]

California charter schools "shall not discriminate against any pupil on the basis of ethnicity, national origin, gender or disability."[354] Admission to a charter school is not to be determined by a student's residence, except that students residing in the area of a school

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[346] MN § 124.064, Subd. 4.

[347] MI § 502 (1).

[348] KS § 4 (d) (2).

[349] KS § 4 (c) (8).

[350] MA ch. 71, § 89.

[351] MA ch. 71, § 89.
The fact that the Massachusetts statute prohibits discrimination on the basis of "academic achievement," but allows a school to set "reasonable academic standards" as a basis for admissions and further allows the school to restrict admissions according to the school's "area of focus" has created some uncertainty on the part of potential charter school organizers. The Massachusetts "Charter School Application" pamphlet (Executive Office of Education, Commonwealth of Massachusetts, One Ashburton Place, Room 1401, Boston, Massachusetts 02108, 1995) recommends that the applicant "establish as open an admissions policy as possible." p. 12.

[352] MA ch. 71, § 89.

[353] MA ch. 71, § 89.

[354] CA § 47605 (d).

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converted to a charter school are given preference.[355] The school apparently may establish certain admissions requirements,[356] but is also responsible "to achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter application is submitted."[357] The statute provides no guidance for dealing with the possibility of over-enrollment.

Minnesota allows "no discrimination on the basis of intellectual ability, measures of achievement or athletic ability."[358] If more than half of the students at a proposed charter school organized by a predominately Caucasian organization are expected to be Caucasian, the statute requires that the application be reviewed by a ten-member advisory board, eight of whom must be from minority groups.[359] Minnesota's charter schools may limit admissions to people able to participate in the state's high school graduation incentives program,[360] or to residents of areas where minorities are in the majority, so long as the school reflects the area's diversity.[361] In the event of over-enrollment, a charter school shall admit by lottery.[362]

Michigan's legislation states that a charter school "shall not discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district."[363] But within these restrictions it "may limit admission to pupils who are within a particular range of age or grade level or on any other basis that would be legal if used by a school district."[364] Charter schools may give priority to the admission of a sibling.[365] Aside from foreign exchange students, a school is limited to admitting pupils within the geographic boundaries of the authorizing body.[366] Schools sponsored by a public state university may admit students from across the state.[367] In the event of over-enrollment, the charter school shall admit by "a random selection process."[368]

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[355] CA § 47605 (d).
[356] CA § 47605 (b) (8).
[357] CA § 47605 (b) (7).
[358] MN § 120.064, Subd. 9
[359] MN § 120.064, Subd. 6.
[360] MN § 120.064, Subd. 9 (2).
[361] MN § 120.064, Subd. 9 (4).
[362] MN § 120.064, Subd. 9
[363] MI § 504 (2).
[364] MI § 504 (2).
[365] MI § 504 (3).
[366] MI § 504 (3).
[367] MI § 504 (3).
[368] MI § 504 (3).

As a general rule, Arizona charter schools are required to "enroll all eligible pupils who submit a timely application."[369] Charter schools sponsored by school districts must give "enrollment preference to eligible pupils who reside within the boundaries of the school district where the charter school is physically located."[370] The schools must admit pupils who reside in areas under desegregation orders or agreements unless notice is received that such admissions would violate the order or agreement.[371] In the case of over enrollment, "the charter school shall select pupils through an equitable selection process such as a lottery."[372] Schools "may limit admissions to pupils within a given age group or grade level,"[373] but are prohibited from discriminating on the basis of "ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language or athletic ability."[374]

New Mexico and Georgia, which only allow existing schools to convert to charter school status, assume that students who would otherwise attend the public school are unaffected by the conversion. Impliedly, current bases for school admissions remain in force. The Missouri statute does not discuss admissions, but the requirement that the state board choose schools at, above, and below average performance levels for the pilot program implies an intention to retain the school's existing admissions program so as not to skew review of the student performance under the new scheme of management. For example, if the schools in question are converted "neighborhood" schools, it would appear that residence would continue to be a valid basis for discrimination in admissions. If they are special schools for the arts they would continue to use their special admissions criteria.

Wisconsin's statute does not allow a charter school to "[d]iscriminate in admission or deny participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability."[375] A charter school must also "give preference in admission to any pupil who resides within the attendance area or former attendance area of that school."[376] Otherwise, admission requirements are a matter for negotiation between those organizing the school and the school board. However, like California, Wisconsin's statute places charter schools under an obligation to "achieve a racial and ethnic balance among its pupils that is reflective of the school district population."[377]

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[369] AZ § 15-184 (A).

[370] AZ § 15-184 (A).

[371] AZ § 15-184 (D).

[372] AZ § 15-184 (A).

[373] AZ § 15-184 (C).

[374] AZ § 15-184 (B).

[375] WI § 118.40 (4) (b) (2).

[376] WI § 118.40 (4) (a) (1).

Colorado's legislation states that its charter schools "shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services."[378] Charter schools in Colorado are also "subject to any court-ordered desegregation plan in effect for the school district."[379] Admission to the school "must be open to any child who resides within the school district."[380] The statute provides no guidance in the event that a school is over-enrolled.

Employer-Employee Relations. Massachusetts may offer the least restrictions in this area. The statute does not specifically require that the board of a charter school hire certified teachers.[381] Charter school teachers are entitled to organize for the purposes of collective bargaining.[382] The charter school, not the school district where the school is located, is the public employer with whom the employees bargain.[383] Moreover, public school teachers must be permitted up to four years leave of absence to teach at a charter school.[384] At the end of that time a teacher must either resign from, or return to, the local district.[385] Finally, charter school teachers with certificates are covered by the state teacher retirement system.[386]

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[377] WI § 118.40 (1m) (b).

[378] CO § 22-30.5-104 (3).

[379] CO § 22-30.5-104 (3).

[380] CO § 22-30.5-104 (3).

[381] MA ch. 71, § 89. Bierlein and Mullholland state that Massachusetts charter schools must hire certified teachers. Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative*, Appendix A: Comparison of Charter School Laws, Morrison Institute for Public Policy, School of Public Affairs, Arizona State University, Tempe, AZ 85287-4405, October 1993.
According to the General Counsel to the Massachusetts Secretary of Education, charter schools are exempt from teacher certification law and may hire uncertified teachers. Author's notes, October 22, 1994 conference, Worcester, Massachusetts, *Charter Schools: A Grassroots Approach to Education Reform*, General Counsel's remarks at morning session on public school laws applicable to charter schools.

[382] MA ch. 71, § 89.

[383] MA ch. 71, § 89.

[384] MA ch. 71, § 89.

[385] MA ch. 71, § 89.

[386] MA ch. 71, § 89. Massachusetts has instituted an alternative certification program through which otherwise uncertified charter school teachers may obtain certification and thus access to the retirement program. Author's notes, October 22, 1994 conference, Worcester, Massachusetts, Charter Schools: A Grassroots Approach to Education Reform, General Counsel's remarks at morning session on public school laws applicable to charter schools.

Minnesota specifically requires a charter school to hire licensed teachers to perform teaching duties.[387] However, the charter school does have independent authority to hire, fire, and discipline those teachers.[388] Charter school employees may choose to organize independent bargaining units under the state's public sector collective bargaining statute.[389] Should they do so, they negotiate directly with the charter school. Alternatively, the statute specifically allows the school's teachers to contract as a cooperative with the school's board of directors to perform instructional services.[390] (A majority of the board must be licensed teachers.[391]) If the charter school's teachers choose neither, they may not remain part of the district's bargaining unit.[392] There are no restrictions on the period of leave that must be granted a teacher from a school district to teach in a charter school.[393] However, to retain pension benefits, the charter school teacher becomes solely responsible for full payment of contributions.[394] Conceivably, teachers are free to negotiate with the charter school to pay the portion once assumed by the district.

Missouri does not permit collective bargaining in public education[395] and charter schools' management teams are responsible for personnel and staffing decisions.[396] Under the Missouri statute, certified teaching staff at a charter school are paid according to district schedules and remain subject to the laws concerning teacher contracts.[397] The statute does not discuss teacher retirement plans, but there is no reason to believe teachers would not remain in any such state system during the pilot project. Indeed, given the status of the schools as pilot projects, it is highly unlikely that the statute implies any significant changes in existing employer-employee relations.[398]

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[387] MN § 120.064, Subd. 11.

[388] MN § 120.064, Subd. 11.

[389] MN § 120.064, Subd. 20.

[390] MN § 120.064, Subd. 4 (c).

[391] MN § 120.064, Subd. 4 (c).

[392] MN § 120.064, Subd. 20.

[393] MN § 120.064, Subd. 19.

[394] MN § 120.064, Subd. 19.

[395] Marc Dean Millot, *Negotiating the New American School: State Law on the Scope of Bargaining in Public Education*, MR-387-NASDC, The RAND Corporation, (forthcoming).

[396] MO § 18.3.

[397] MO § 18.3.

[398] Bierlein and Mullholland state that Missouri charter schools must hire certified teachers, and that those teachers remain district employees for the purpose of job security and retirement. Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative*, Appendix A: Comparison of Charter School Laws, Morrison Institute for Public Policy, School of Public Affairs, Arizona State University, Tempe, AZ 85287-4405, October 1993

Under the Colorado legislation, charter schools may negotiate exemptions from any state or district policy or regulation,[399] thereby allowing negotiation over teacher qualifications and enabling the district and the charter school applicant to jointly request the state board to grant a release from the state requirement that teachers be certified.[400] The statute requires the charter school application to contain "an explanation of the relationship that will exist between the school and its employees, including evidence that the terms and conditions of employment have been addressed with affected employees and their recognized representative (for the purposes of collective bargaining) if any."[401] Colorado permits, but does not require, collective bargaining between public school teachers and school districts.[402] This implies that existing schools converted to charter school status may be subject to existing collective bargaining arrangements. Charter schools are permitted to contract with any third party other than a private or sectarian school to perform any service in the charter schools educational program, including education services.[403]

The Colorado statute also gives teachers up to three years leave of absence from their school district to work in a charter school.[404] At the end of that period the district has the authority to determine the teacher's employment relationship.[405] If the local school district is operating under a collective bargaining agreement, the process by which a teacher employed at a charter school may return to the district will be a matter for negotiation with the district's teachers' union, otherwise it will be left up to the local board.[406] Charter school employees will remain part of the state's Public Employees' Retirement System or the Denver Public Schools Retirement System, and their retirement is funded as it would be by a school district.[407]

The Arizona statute permits but does not explicitly define the status of charter school employees or the nature of labor relations at a charter school site. Arizona permits, but does not require school authorities to engage in collective bargaining with public school employees.[408] A charter school has the power to contract.[409] Charter school applications may include "a description of...personnel policies [and] personnel qualifications."[410] The charter school legislation also exempts charter schools "from all statutes and rules relating to schools, governing boards and school districts."[411] The statute would not seem to bar using personnel who do not hold teacher certificates as teachers in the charter school. The statute seems to allow the school to hire and fire on its own authority or to use district employees. The statute appears to give charter school organizers the options of negotiating contracts with an existing bargaining unit representing employees across the school district, a bargaining unit formed solely to represent employees at the school, or with individual employees.

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[399] CO § 22-30.5-104 (6).

[400] CO § 22-30.5-105 (3).

[401] CO § 22-30.5-106 (1).

[402] Littleton Ed. Ass'n v. Arapahoe County Sch. Dist., 553 P.2d 793 (Colo. 1976).

[403] CO § 22-30.5-104 (7) (b). The prohibition on private or sectarian education services is implied by the general prohibition contained in Section 22-30.5-104 (1).

[404] CO § 22-30.5-111 (1).

[405] CO § 22-30.5-111 (1).

[406] CO § 22-30.5-111 (2).

[407] CO § 22-30.5-111 (3).

[408] Bd. of Ed. of the Scottsdale High Sch. Dist. v. Scottsdale Ed. Ass'n, 109 Ariz. 342, 509 P.2d 612 (Ariz. 1973).

[409] AZ § 15-183 (H).

The Arizona statute also provides teachers with protection from "reprisal" by school district authorities for their participation in the establishment of a charter school.[412] Teachers participating in a charter school proposal shall not be subject to "disciplinary or corrective action...; detail, transfer or reassignment...; suspension, demotion or dismissal...; an unfavorable performance evaluation...; a reduction in pay, benefits or awards...; elimination of the employee's position without a reduction in force by reason of lack of monies or work; other significant changes in duties or responsibilities that are inconsistent with the employee's salary or employment classification."[413] Moreover, charter school teachers previously employed by a school district "shall not lose any right of certification, retirement or salary status or any other benefit provided by law, ...due to teaching at a charter school on the teachers return to the school district."[414] Such teachers are permitted to return to teaching at the district and "shall be given employment preference" if they apply for employment at the district no later than three years after leaving the district to teach in the charter school and a suitable position is available.[415]

California's charter school statute leaves much to negotiation between the school district and the charter school applicants. The legislation requires a description of "[t]he qualifications to be met by individuals to be employed by the school," but does not specifically require that they be certified teachers,[416] implying that school may choose to hire teachers who are not certified. California's blanket exemption provision[417] apparently exempts charter schools from the state's Educational Employment Relations Act (EERA), but does not explain the legal status of labor relations in the schools.[418]

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[410] AZ § 15-183 (F).

[411] AZ § 15-183 (E) (5).

[412] AZ § 15-183 (L).

[413] AZ § 15-183 (L) (1) (a)- (g).

[414] AZ § 15-187 (A).

[415] AZ § 15-187 (B) (1), (2).

[416] CA § 47605 (b) (5).

[417] CA § 47610.

The California legislation does require that the charter school petition explain how "staff members will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security,"[419] but does not specify that employees must be covered by a particular pension plan. However, if charter school teachers remain under the State Teachers' Retirement System, they are covered and funded exactly as they would be by the school district.[420] Similarly, the statute requires the petition to explain the rights of public school employees if they leave the school district to work in a charter school and on their return to the district,[421] but does not specify that employees have particular rights on leaving or returning to the district. In addition, school districts may not require a teacher to work at a charter school.[422]

In the case of Michigan, charter schools organized under school district boards or intermediate school boards must hire certified teachers to perform teaching duties, state public universities may hire full time tenure-tracked instructors, and community colleges may hire full-time specialists with five years experience in the field in which they teach at the school.[423] Moreover, charter schools require the approval of the approving authority to "employ or contract with personnel..., prescribe their duties, and fix their compensation."[424] Teachers and other employees in charter schools organized under school districts are part of the bargaining units of that district.[425] The status of teachers in the charter schools and their right to return to non-charter schools in the district are presumably topics for negotiation. The statute is silent as to teachers' status under the state retirement system or their right to a leave of absence to teach in a charter school. However, it would seem likely that teachers in schools authorized by local boards would be in the state system, given the fact that they would be hired by the board.

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[418] Charter School Implementation Challenges, Working Paper #1, *Redesigning Education: Supporting the Charter Schools Movement*, BW Associates, Berkeley, California, January 1993, at 19. ("What is not clear, however, is what labor law, if any, is applicable to charter schools, or whether charter schools may choose to make themselves subject to the EERA.")
In their review of the first year of California charter school operations, Dianda and Corwin stated a somewhat different conclusion,
"(Under the California statute) discretion over staffing and collective bargaining is considerably broader than in most other states. California permits noncertified teachers to teach in a charter school and to choose whether its staff will operate under the terms of locally bargained employee contracts. A charter school may choose not to bargain, it may become its own bargaining unit, or it may follow the terms of locally negotiated employee contracts....
Given these provisions, it is not surprising that Gov. Pete Wilson signed California's legislation over the objections of the state's four education employees' unions - California Teachers Association, California School Employees Association, California Federation of Teachers, and California State Council Service Employees International Union." Dianda and Corwin, at 8-9.

[419] CA § 47605 (b) (11).

[420] CA § 47611.

[421] CA § 47605 (b) (12).

[422] CA § 47605 (e).

[423] MI § 505.

[424] MI § 506.

[425] MI § 502 (3) (h), § 503 (4) (e).

The charter statutes of New Mexico and Georgia make no explicit changes in the status of employees at charter schools. Unless waived by the state board of education, schools remain subject to state requirements that the district hire certified teachers, school districts continue to assign personnel to the charter school, and teachers remain part of to the state retirement system. Neither statute appears to contemplate delegating authority over personnel decisions to local schools, both characterize the charter school as part of the local school board, and not independent of it.[426] Both states permit collective bargaining in public education, but do not require it.[427] Both charter school statutes imply that all waivers must be explicitly granted,[428] and the New Mexico statute seems to limit the scope of permissible waivers so as to prohibit the delegation of personnel decisions to local schools.[429]

Under the Kansas statute, the school district remains the public employer of charter school personnel. The staff of a charter school will be "employed by the district for assignment to the charter school."[430] The charter school petitioner can negotiate the qualifications of persons to be employed at the school with the local and state boards of education.[431] It can also negotiate specifications concerning the "terms and conditions of employment in the charter school."[432] Together with the possibility of exemptions from state statutes,[433] this implies the possibility of the local board hiring non-certified teachers for assignment to charter schools. However, Kansas requires collective bargaining between teachers and school districts, which implies that the matter may be subject to negotiation with the district teachers' union as well.[434]

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[426] See the discussion of legal status, powers and authorities above.

[427] Marc Dean Millot, *Negotiating the New American School: State Law on the Scope of Bargaining in Public Education* 27, MR-387-NASDC, The RAND Corporation, (Forthcoming).

[428] See the discussion of exemptions above.

[429] The state board may grant waivers ... for the purpose of providing class size and structure flexibility, alternative curriculum opportunities and alternative budget opportunities." NM § 22-8A-6.

[430] KS § 4 (c) (6).

[431] KS § 4 (e), (f).

[432] KS § 4 (c) (12).

[433] KS § 4 (c) (14), (e), (f).

[434] See generally, State Statutes on School District Collective Bargaining (Office of the General Counsel, National School Boards Association), 1991, at 1.

The Kansas statute also requires the petitioner to specify "the manner in which contracts of employment and status of certified employees will be dealt with" if a charter is terminated or not renewed, or if a teacher decides to stop working at the school.[435] Employees at a charter school who otherwise qualify for participation in the state public employees' retirement system shall be members of the system.[436] Employees who qualify for health insurance and other benefits provided to other employees of the school district will be eligible for those programs as well.[437]

Wisconsin's legislation obligates charter school petitioners to describe the qualifications required of employees.[438] The statute does not discuss whether teachers must be licensed. However, a charter school has the status of an "instrumentality of the school district" and the district is considered to be the employer of all personnel for the charter school.[439] This implies that the charter school's teachers must meet the license requirements established for teachers hired by the district, that the school district assigns personnel to the charter school, that the charter school's teachers are part of the district for collective bargaining purposes, and that they remain under the state public teachers' retirement system.[440] It further implies that charter school contract provisions regarding restrictions on public school teachers' rights if they move to a charter school or choose to return to school district employment, which are important in other state's charter school statutes, have no bearing in Wisconsin.

Authorized Forms of Self-Government

The Massachusetts legislation is probably the most supportive of school autonomy. It requires a charter school to be managed by a board of trustees, who are responsible for the school's curriculum and budget, and internally governed under terms set forth in the charter.[441] Should the school organize as a non-profit corporation under Section 180 of the Massachusetts General Laws, as they are advised by the secretary of education's general counsel, the flexibility of that statute enables the school's organizers to decide who will be represented on the schools decisionmaking body or bodies, and to determine the decisionmaking processes under which the school will be managed. The non-profit statute also provides the certainty of default procedures and rules where the organizers are silent or cannot decide. There is no need for the charter school organizers to invent new systems of governance, although it may under the charter school statute. The non-profit law provides a well-worn path with few surprises. Indeed, it is likely that non-profit law will be used to interpret the governance provisions of schools formed exclusively under the charter school statute.[442]

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[435] KS § 4 (c) (13).

[436] KS § 7 (a).

[437] KS § 7 (b).

[438] WI § 118 (1m) (b) (7). Wisconsin requires collective bargaining in public education. Marc Dean Millot, *Negotiating the New American School: State Law on the Scope of Bargaining in Public Education* 32, MR-387-NASDC, The RAND Corporation, (forthcoming).

[439] WI 118.40 (7).

[440] Bierlein and Mullholland state that Wisconsin charter schools must hire licensed teachers and that teachers remain district employees for the purposes of retirement, collective bargaining and job security. Louann Bierlein and Lori Mullholland, *Charter School Update: Extension of a Viable Reform Initiative*, Appendix A: Comparison of Charter School Laws, Morrison Institute for Public Policy, School of Public Affairs, Arizona State University, Tempe, AZ 85287-4405, October 1993.

[441] MA ch. 71, § 89.

Minnesota allows a charter school to organize as a non-profit corporation or a cooperative.[443] Like the Massachusetts statute, the Minnesota legislation provides charter school organizers with a highly flexible system of self-governance, with one very important exception: Minnesota substantially restricts charter school self-governance by requiring that licensed teachers at the school constitute a majority of the board of directors.[444]

Arizona, California, Colorado, Kansas, and Wisconsin do not specifically limit the organizers of a charter school to any particular type of self-government. In theory, these provisions offer charter school applicants broad latitude in how they organize the school for self-government. It seems likely that in practice they will have less autonomy because governance structures will not be under their control.

Arizona requires that charter school applications "provide for a governing body for the charter school that is responsible for the policy and operational decisions of the charter school."[445]

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[442] Author's notes, October 22, 1994 conference, Worcester, Massachusetts, Charter Schools: A Grassroots Approach to Education Reform, General Counsels remarks at morning session on public school laws applicable to charter schools.

[443] MN § 120.064, Subd. 4.

[444] MN § 120.064, Subd. 4.

The provision requiring that teachers make up a majority of the board (MN § 120.064, Subd. 4) and the provision allowing the board to contract with a teachers cooperative for the provision of teaching services (MN § 120.064, Subd. 4 (c)) may lead to problems if the school is established as a nonprofit corporation. By law, a nonprofit corporation may not distribute surplus funds to its officers or directors. In small charter schools the same teachers may wish to maintain control over the nonprofit corporation that holds the charter and directs the school, yet also plan to contract with the school for educational services as a cooperative and distribute any profits from the enterprise among themselves. Such a practice would seem highly questionable. If they are prohibited from receiving a distribution of surplus as directors, those same teachers ought not to be permitted to take profits as members of a cooperative from a contract they approved as a majority of the board of directors. The conflict of interest between their fiduciary obligations as directors of the nonprofit and their profit motive as members of a cooperative is readily apparent.

[445] AZ § 183 (E) (8).

California's statute only requires the petition to include the proposed school's "governance structure, including, but not limited to, the process to be followed by the school to ensure parental involvement."[446] Wisconsin's legislation contains similar wording.[447] Schools have been formed as non-profit corporations, unincorporated associations and Joint Powers Authorities under the California code.[448] However, Wisconsin charter schools are deemed "an instrumentality of the school district in which it is located."[449] Colorado makes the governance structure a matter for negotiation between the applicant and the local board of education.[450] The Kansas statute makes it a matter for negotiation with the school board and the State Board of Education.[451]

Michigan requires a charter school to organize as a non-profit corporation but requires no specific form of corporate governance other than by a board of directors as specified under the non-profit statute.[452] However, the statute requires that the approving authority, rather than the school's organizers, "adopt a resolution establishing the method of selection, length of term, and number of directors of the board."[453]

Missouri requires its charter schools to be run by a management team consisting of five members.[454] At least three members of the team must be certified teachers, one of whom is to be designated as the school's principal.[455] The method by which that team will make decisions is not specified in the statute.

Charter schools in Georgia and New Mexico remain part of their school districts and under the control of their local boards. Georgia's legislation makes no specific mention of governance. It does require the petition to describe teacher and parental involvement in the proposed educational plan.[456] The statute does require the charter to contain a provision whereby a vote by over two-thirds of the faculty and staff to declare the charter null and void will cause the school to revert to its normal status.[457] The New Mexico statute says nothing about self-government.

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[446] CA § 47605 (b) (4).

[447] WI § 118.40 (1m) (6).

[448] Charter School Implementation Challenges," Working Paper #1, *Redesigning Education: Supporting the Charter Schools Movement*, BW Associates, Berkeley, California, January 1993, at 8. However, other schools "have yet to explore these issues or are leaving them unanswered (either intentionally, or by default.)

[449] WI § 118.40 (7).

[450] CO 22-30.5-104 (4).

[451] The Kansas statute requires a petitioner to describe "the governance structure of the school, including the means of ensuring accountability to the board of education." KS § 4 (c) (5). See also KS § 4 (e), (f).

[452] MI § 502 (2).

[453] MI § 503 (3).

[454] MO § 18.2 (1).

[455] MO § 18.2 (1).

[456] GA § 22-2-255 (c) (6), (7).

Responsibility for Displaced Students and Teachers

California places responsibility for displaced teachers on the school district. "No governing board of a school district shall require any employee of the school district to be employed in a charter school."[458] The Arizona, Kansas, Massachusetts, Michigan, Missouri, and Minnesota statutes discuss no such requirements for either teachers or students. Wisconsin establishes no such requirement with regard to teachers. The issue does not apply to New Mexico and Georgia, whose statutes assume that students and teachers will remain at the converted schools and hence require super-majorities in favor of change.

California's statute requires that applicants include in their proposed charter a provision describing "[t]he public school alternatives for pupils residing within the school district who choose not to attend charter schools."[459] Colorado requires that the proposal incorporate "a plan for the displacement of pupils, teachers, and other employees who will not attend or be employed in the charter school."[460] Wisconsin requires the organizers to include in their proposal a provision describing "[t]he public school alternatives for pupils who reside in the school district and do not wish to attend or are not admitted to the charter school,"[461] but the school board, not the charter school, must provide alternatives for such students.[462]

Responsibility for Student Transportation

For children residing in the district where the charter school is located, Massachusetts explicitly places responsibility for student transportation with the district "on the same terms or conditions as transportation is provided to children attending local district schools." In other cases, the state may be responsible.[463] In Georgia, New Mexico, and Missouri, the fact that charter schools are converted schools in which the student body remains unchanged, and that the schools remain part of the district, suggests that the school district would remain responsible for student transportation. Wisconsin's statute does not mention it, but given the statute's statement that a charter school is the instrumentality of the local school board,[464] it would be reasonable to assume that the local district would continue to be responsible for student transportation.

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[457] GA § 22-2-255 (f) (1).

[458] CA § 47605 (e).

[459] CA § 47605 (b) (12).

[460] CO § 22-30.5-106 (1) (g).

[461] WI § 118.40 (1m) (b) (13).

[462] WI § 118.40 (b) (2).

[463] MA ch. 71, § 89.

Colorado and Minnesota require that the responsibility for student transportation be covered in the contract, making transportation a subject of bargaining between the school's organizers and the local school district.[465] The California statute does not mention transportation but, as a practical matter, it appears to be negotiable.[466]

Kansas requires the school district "to provide transportation...for pupils who qualify for free meals under the national school lunch act and who live 1/2 or more miles from the school."[467] The act explicitly permits, but does not require, the district to provide free transportation for all students at the school.[468] The matter seems to be negotiable between the district and the school.[469]

The Michigan legislation does not address student transportation. Where a school is approved by a school district or intermediate school board the responsibility for transportation is unclear. Where the school is approved by a community college or state public university, the case for the approving authority to bear the burden of transport rather than the school district would seem strong.

Arizona provides charter schools with a means of funding student transportation, which implies that the charter school is responsible for providing students with transportation services.[470] Presumably the school could contract with the district.

Charter School Financing

The re-authorization of the Elementary and Secondary Education Act passed by Congress and signed into law by President Clinton in October of 1994 creates a grant program to fund the start up costs of schools that have received charters.[471] Fifteen million per year was authorized by the act, $6 million was appropriated for FY 1994.[472] Eligible charter schools may receive grants for up to three years, including 18 months for planning and program design, and two years for operation.[473]

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[464] WI § 118.40 (7).

[465] CO § 22-30.5-106 (1) (k); MN § 120.064, Subd. 5 (6).

[466] Charter School Implementation Challenges, Working Paper #1, *Redesigning Education: Supporting the Charter Schools Movement* 17, BW Associates, Berkeley, California, January 1993.

[467] KA § 6.

[468] KA § 6.

[469] *See generally*, KS § 4.

[470] AZ § 185 (B) (3).

[471] Sections 10301 - 10307 of the Improving America's Schools Act of 1994.

Thus far, Arizona is the only state to provide charter schools with special funding to cover start up costs, including renovation or remodeling of existing structures.[474] These funds are administered by the State Department of Education under rules adopted by the State Board of Education.[475] Once a charter has been granted "qualifying applicants" shall be awarded an initial grant of up to $100,000[476] and may be eligible for an additional grant up to that same amount.[477]

The Massachusetts statute envisions charter schools drawing students from across the state, and mandates a payment by the district to the charter school of no less than the lesser of the average cost per student in the district where the student resides or where the charter school is located.[478] In theory, this approach assures that a charter school receives financing at nearly the same per-pupil level as the district where the student resides.[479] Moreover, it permits the charter school to draw on precisely the same base of funding as the traditional school—including not only state payments but also local tax revenues. However, the charter school is not eligible for state school building assistance funds for constructing, reconstructing, or improving the school.[480] Charter schools are permitted to accept gifts and grants, acquire real property and borrow in anticipation of revenues, which would seem to allow them to borrow start up funds and take out mortgages to build or buy suitable facilities. Massachusetts charter schools are under no obligation to contract with school districts for anything.

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[472] Senator Dave Durenberger, "Summary of ESEA Conference Committee Agreement Creating a new federal Charter Schools Grant Program," undated leaflet attached to Durenberger "Dear Friend" letter of October 7, 1994.

[473] Section 10302 of the Improving America's Schools Act of 1994.

[474] AZ § 15-188 (A).

[475] AZ § 15-188 (A), (B).

[476] AZ § 15-188 (B) (1).

[477] AZ § 15-188 (B) (2).

[478] MA ch. 71, § 89.

In neither the charter school law, nor anywhere else in the Massachusetts General Laws, is the term "average cost per student" defined. The secretary of education believes that the definition of the term is within the Secretary's discretion. At the moment it appears likely that the secretary will use data maintained by the state Department of Education on each district's per pupil expenditures. Author's notes, October 22, 1994 conference, Worcester, Massachusetts, *Charter Schools: A Grassroots Approach to Education Reform*, remarks at the afternoon session on charter school financing.

[479] The Secretary will probably choose to use a weighted average cost of all students in a district. The result will be to provide a level of funding slightly higher than the average cost of an elementary school student, slightly lower than the cost of a middle school student, significantly lower than the cost of a high school student, and at a level that some argue prohibits the formation and operation of a vocational high school. Author's notes, October 22, 1994 conference, Worcester, Massachusetts, *Charter Schools: A Grassroots Approach to Education Reform*, remarks at the afternoon session on charter school financing.

[480] MA ch. 71, § 89.

Minnesota charter schools do not have access to funds raised by school districts by local tax revenues. The state pays charter schools general educational, capital expenditure, and special education revenues on the same basis as it would a school district.[481] General educational payments are made on a per pupil unit basis, plus compensatory payments for students eligible for Aid For Dependent Children (AFDC) assistance.[482] Charter schools may use state capital expenditure payments "for any purpose related to the school."[483] Special education payments are charged to the student's district of residence.[484] Charter schools are also eligible for funds from a variety of other state and federal sources, including for start up costs and capital facilities.[485] These funds must be used for their designated purpose.[486]

California has adopted a similar approach to Minnesota. But while the statute reads that the superintendent of public instruction "shall make...apportionments" of state and federal funds to the charter schools, in fact they are paid to the schools through the district.[487]

Under Arizona's statute, charter school financing varies by the type of approving authority that granted the charter. Schools established by local school boards "shall receive per pupil expenditures equal to at least the average cost per pupil for the district as a whole."[488] Schools sponsored by the State Board of Education or the State Board for Charter Schools are funded like school districts, with separate financing arrangements for base support, transportation, and capital outlays.[489] The statute implies that charter schools sponsored by the local board receive their funds through the district, while those sponsored by the State Boards are financed directly by the state.[490]

In passing the Colorado charter school statute, the legislature noted its intention "that funding and service agreements" between charter schools and their local school districts "shall be neither a financial incentive nor a financial disincentive to the establishment of a charter school."[491] District services are to be provided at cost and the district may not charge rent for space in school district facilities.[492] Nevertheless, Colorado requires its charter schools to negotiate with their local district for their share of district educational revenues, starting from the minimum funding requirement of 80 percent of district per pupil operating revenues.[493] Charter schools are entitled to a "proportionate share of state and federal resources generated by students with disabilities or staff serving them," as well as a "proportionate share of moneys generated under other federal or state categorical aid programs" serving charter school students eligible for this aid.[494]

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[481] MN § 124.248, Subd. 1-3.

[482] MN § 124.248, Subd. 1.

[483] MN § 124.248, Subd. 2.

[484] MN § 124.248, Subd. 3.

[485] MN § 124.248, Subd. 4 (a) - (c).

[486] See, MN § 124.248, Subd. 4 (b), (c).

[487] See generally, CA § 47612. The difference between apportionment and payment was highlighted in conversations with Eric Premack of the Charter Schools Project and Senior Analyst at the Institute for Policy Analysis in Berkeley.

[488] AZ § 15-185 (A).

[489] AZ § 15-185 (B).

[490] AZ § 15-185.

The Wisconsin statute requires the school board's payment to the school for each year of the contract to be specified in the contract and prohibits the board from paying more than it "spends on average per pupil enrolled in the (district's) schools, excluding charter schools, as determined by the state superintendent."[495] The statute is otherwise silent.

Michigan's legislation contains few references to fiscal matters. Charter schools are treated as school districts,[496] but the statute makes the approving authority the charter school's fiscal agent and gives it "the responsibility to oversee...compliance with the contract and all applicable law."[497] However, the statute also requires that the approving authority take school aid payments for the charter school and forward them to the charter school.[498] This implies that the charter school will at least do its own budgeting and accounting. This impression is reinforced by the fact that a charter school contract may be revoked if the school fails to meet "generally accepted public sector accounting principles."[499]

The Georgia statute contains no reference to funding. Presumably charter schools in that state continue to be funded as part of the school district they belong to, with budget controls in the hands of the local board. Under the New Mexico statute, a charter school submits its proposed budget to the local school board for approval and submission by the board to the State Department of Education.[500] The charter school's budget is "based on the projected total MEM at that school and the projected number of program units generated by students at that individual school."[501] The local school board establishes a separate account for charter school disbursements[502] and "may retain an amount not to exceed the school district's administrative cost relevant to that charter school."[503] Missouri's statute does not discuss funding.

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[491] CO § 22-30.5-112 (2) (d).
[492] CO § 22-30.5-104 (7) (b), (c).
[493] CO § 22-30.5-112 (2) (a), (c).
[494] CO § 22-30.5-112 (3).
[495] WI § 118.40 (3) (b).
[496] MI § 501 (1).
[497] MI § 507.
[498] MI § 507.
[499] MI § 507 (c).
[500] NM § 22-8-6.1.

The Kansas statute is virtually silent on matters of funding. The little it says tends to suggest that the local and state boards of education exercise substantial control over a charter school's finances. On the one hand, the act requires petitioners to explain their proposed annual financial audit procedures.[504] This implies that the school has a responsibility to account for its expenditures, and thus the authority to disburse funds. On the other hand, the act requires the proposed school budget to be incorporated into the petition for approval by the local and state boards of education,[505] which implies that the school does not control key financial decisions.

Aside from charter schools in Massachusetts, and charter schools sponsored by state boards in Arizona and authorized by community colleges and public state universities in Michigan, charter school statutes that speak to the matter require public monies destined for charter schools to pass through the school district and require the schools to negotiate for their fair share.[506]

THE PROCESS OF BECOMING A CHARTER SCHOOL

Assistance to Charter School Applicants

The Kansas statute suggests that the State Board of Education is required to provide substantial support to charter school applicants:

> The state board of education shall provide, upon request...technical advice and assistance regarding the establishment and operation of a charter school or the

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[501] NM § 22-8-6.1.

[502] NM § 22-8-15 (C).

[503] NM § 22-8-15 (B).

[504] KS § 4 (c) (9).

[505] KS § 4 (c) (15).

[506] Louann Bierlein and Lori Mulholland, *Charter School Update: Expansion of a Viable Reform Initiative* 11, Morrison Institute for Public Policy, Arizona State University, Tempe, Arizona, October, 1993.

> preparation of a petition requesting authorization of a board of education for the establishment and operation of such a school.[507]

Under Georgia's legislation, the State Department of Education is "authorized and directed to provide technical assistance to the faculty and instructional staff of schools in the creation or modification of charter school petitions."[508] The department has no responsibility to assist in the continuing operation of charter schools.

The Missouri legislation permits the State Board of Education to provide technical assistance to school boards establishing the three charter schools, but does not mention direct assistance to the schools.[509]

In the event a proposed charter application is denied, Arizona's legislation allows approving authorities to provide charter school applicants with "technical assistance to improve the application" for re-submission.[510] The legislation also requires the State Department of Education to publish an annual list of vacant state and school district buildings "that may be suitable for the operation of a charter school."[511] The list shall be made available to charter school applicants, although the building owners are otherwise under no obligation to sell, lease or otherwise make the building available for use as a charter school.[512]

Colorado requires any local board of education that establishes a schedule for reviewing charter school applications to provide it to all interested parties on request.[513] The local and state boards are required to provide applicants with summaries of school district policies and state regulations to charter school applicants on request.[514] The State Department of Education is directed to prepare the summary of state regulations within existing appropriations.[515]

California requires the state "board of education to distribute information announcing the availability of the charter school process...to each school district, county office of education, and public postsecondary educational institution and, through press releases, to each major newspaper in the state."[516]

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[507] KS § 8 (a).

[508] GA 20-2-255 (e).

[509] MO § 18.2 (1).

[510] AZ § 15-183 (C) (1), (2).

[511] AZ § 15-189.

[512] AZ § 15-189.

[513] CO § 22-30.5-107 (1).

[514] CO § 22-30.5-104 (6).

[515] CO § 22-30.5-104 (6).

Minnesota only requires the state board to notify potential applicants when the maximum number of schools has been authorized.[517]

Massachusetts requires the "secretary of education to establish the information needed in an application for the approval of a charter school," but establishes no specific requirement to assist applicants in any way.[518]

New Mexico leaves the rules and regulations governing the formation of charter schools to the State Board of Education and does not provide for assistance to applicants.[519]

Wisconsin and Michigan have no requirement to provide information or assistance to charter school applicants.

Size and Nature of Support for the Establishment of a School

Statutes express the support requirement in two ways—the nature of the applicant and affirmative expressions of support for the proposal by members of the community.

Arizona, Kansas, Massachusetts, and Michigan offer the least restrictions on potential applicants. Arizona establishes no particular requirement for community support of a charter school, whether new or converted. Approving authorities "may contract with a public body, private person or private organization for the purpose of establishing a charter school."[520] The statute does not require the approving authority to consider the support of parents, teachers or others for a charter school. Calculations of the likely support of parents may be implicit in forecasts of student enrollment incorporated into proposed school budgets and staff plans.

The Michigan statute only requires that the applicant and proposed board members be identified in the proposal.[521] In Massachusetts, the "persons" eligible to seek a charter from the state secretary of education "include, but (are) not limited to, a business or corporate entity, two or more certified teachers, or ten or more parents."[522] Kansas permits "a school building or school district employees group, an educational services contractor, or any other person or entity" to petition for the establishment of a charter school.[523]

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[516] CA § 47615.

[517] MN § 120.064, Subd. 3.

[518] MA ch. 71, § 89.

[519] NM § 22-8A-7.

[520] AZ § 15-183 (B).

[521] MI § 502 (3) (a) (c).

Wisconsin allows a school district to contract with an individual or group to form a charter school on the district's own initiative, implying the possibility of a similarly small group of applicants.[524] In Minnesota, one or more licensed teachers may be authorized by the local board to operate a new charter school.[525]

Missouri's basic requirement is that school districts volunteer to participate and designate a school site for the experimental charter school project.[526] It then requires that five member management teams present bids to the local board of education to manage the school.[527] At least three team members must be certified teachers; one shall be designated the school's principal.[528] "[N]o bid shall be selected which is submitted by a for-profit corporation."[529] To reinforce the not for profit objective, the statute requires bidders to state management team members' salaries and prohibits overall administrative costs in excess of the average percent spent at other schools operated by the board.[530]

Aside from Arizona, Massachusetts, and Michigan, every state requires that the applicant at least apply first to the local school district to form a charter school. Most statutes also require varying degrees of teacher and, to a lesser extent, parental support before a district may authorize a charter school.

Arizona has no teacher support requirement. The Missouri statute, which contemplates conversion of existing schools, also has no teacher support requirement. Colorado does not specify who can be an applicant. It only requires that the local board determine that "adequate numbers of parents, teachers, pupils, or any combination thereof support the formation of a charter school."[531] This gives the board broad discretion and implies the possibility of a small group of applicants.

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[522] MA ch. 71, § 89.

[523] KS § 4 (b).

[524] WI § 118.40 (2m).

[525] MN § 120.064, Subd. 4 (a).

[526] MO § 18.1.

[527] MO § 18.2 (1).

[528] MO § 18.2 (1).

[529] MO § 18.2 (2).

[530] MO § 18.2 (2).

Kansas only requires that the petition describe "the level of interest and support on the part of school district employees, parents, and the community."[532] Neither the local school board nor the state board is required to base their decision to authorize a charter school on a particular level of support from these constituencies.

In Wisconsin, the support of 10 percent of the teachers in the district is required to start a new charter school (although, as noted above, Wisconsin also makes provision for the board to proceed on its own initiative.)[533] To convert an existing school to charter school status, Wisconsin requires the support of 50 percent of the teachers at the site.[534] Conversion of an existing Minnesota public school requires the support of 90 percent of the teachers.[535]

California requires that 10 percent of the teachers in the district or 50 percent of the teachers at any school in the district sign the petition to establish a charter school—new or converted.[536] Conversion of an entire district requires the support of 50 percent of the teachers in the district.[537]

The legislation passed by New Mexico and Georgia only allows the conversion of existing schools. As noted above, these statutes appear to assume that students from the area normally assigned to the converted school will continue to attend after conversion, and that the teachers normally assigned to the school will not be reassigned. Consequently, the school itself is considered the applicant.[538] These statutes require a high degree of support from teachers and parents at the school. New Mexico requires that 65 percent of the teachers sign a petition in favor of the school and that parents have "substantial involvement in development of the charter school proposal and support" conversion.[539] Georgia requires that over 66 percent of the teachers and over 66 percent of the parents vote in favor of initiating a petition to convert.[540]

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[531] CO § 22-30.5-106 (1) (c).
[532] KS § 4 (c) (2).
[533] WI § 118.40 (1m) (a).
[534] WI § 118.40 (1m) (a).
[535] MN § 120.064, Subd. 4a.
[536] CA § 47605 (a). According to Eric Premack the purpose of this provision is to assure approving authorities that the proposal has the support of teachers. It is not intended to give the teaching staff of a school a veto over any decision to convert an existing public school to charter status. Communication with the author.
[537] CA § 47606 (a).
[538] NM § 22-8A-4 (A), GA § 22-2-255 (c).
[539] NM § 22-8A-5 (B) (1), (2).

Alternative Sponsors

Michigan offers the charter school organizer the largest number of potential approving authorities. Contracts may be granted by four entities: the board of a school district, an intermediate school board, the board of a community college, or the governing board of a state public university.[541] In addition, if the board of a school district denies the contract, the statute authorizes an applicant to place the decision before the district's eligible voters, if at least 15 percent of the voters sign a petition for that purpose.[542]

Arizona's statute provides an applicant with three distinct routes to a charter: the school district governing board, the State Board of Education, or a new State Board for Charter Schools.[543] Each approving authority permits applicants to submit revised proposals in the event the initial application is rejected. The statute does not prohibit a disappointed applicant from submitting a charter school proposal to another approving authority.

In three states with charter school statutes, schools may be authorized by one of two bodies—the local level school board or some higher level body on appeal. California authorizes approval by the school district, or the county board if the district refuses.[544] While in Colorado charters are only granted by the local board of education,[545] the appeals process allows the state board to compel a local board to authorize a charter school.[546] Minnesota allows a local school board to authorize a charter school on terms approved by the state board and, if at least two local board members voted to approve, gives applicants who fail to obtain local approval the opportunity to appeal to the state board for authorization.[547]

The remaining statutes provide only one avenue for approval of a charter school application. In New Mexico and Georgia, only the state board may approve applications to convert a local to charter school status. The local board submits the charter school application to the state board.[548] New Mexico's legislation gives the local board the option of including its recommendation when it submits an application to the state board.[549] In Georgia, if a local board disapproves of a local school's request it must provide the state board with the reasons.[550] The Kansas statute requires both the local school board and the state board of education to approve establishment of a charter school.[551]

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[540] GA § 22-2-255 (c) (2), (3).

[541] MI § 502 (2) (a) - (d).

[542] MI § 503 (2).

[543] AZ § 15-183 (C) (1), (2).

[544] CA § 47605.

[545] CO § 22-30.5-107.

[546] CO § 22-30.5-108.

[547] MN § 120.064, Subd. 4 (a).

Under Missouri's statute, once one of its schools is selected by the state board as a site for the program, the local board selects among competing bids to manage a charter school.[552] There is no appeals process in the legislation.

In Wisconsin, the state superintendent approves charter school applications, but is compelled to do so on the request of a local school board.[553] The superintendent has no independent authorization authority. In Massachusetts, the local school boards play no role in the approval of charter school applications; this is the sole responsibility of the secretary of education.[554]

The Approval Process

The California and Colorado statutes provide all of the procedural factors supportive of school autonomy. In California, after an applicant has obtained the requisite number of teachers' signatures on the charter school petition, the petition may be submitted to the school district's governing board.[555] Within 30 days, the board "shall hold a public hearing on the provisions of the charter at which time the board shall consider the level of employee and parental support for the petition."[556] After the hearing and within 60 days after submission of the petition, the district board shall either grant or deny the charter.[557] However, if the board and the applicant agree, the decision date may be extended by another 30 days.[558] On approval of the petition, the petitioners must notify the State Board of Education in writing and provide a copy of the approved petition.[559]

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[548] GA § 22-2-255, NM § 22-8A-5.

[549] NM § 22-8A-5 (A).

[550] GA § 22-2-255 (g).

[551] KS § 4 (e), (f).

[552] MO § 18.1.

[553] WI § 118.40 (1).

[554] MA ch. 71, § 89.

[555] CA § 47605 (a).

[556] CA § 47605 (b).

[557] CA § 47605 (b).

If the district board does not approve the charter petition, the petitioners may request the county superintendent of schools to form a panel to review the district board's decision.[560] The panel consists of three governing board members and three teachers from other districts in the county—unless the county consists of only one district, in which case the panel members will be drawn from other counties.[561] "If the review panel determines that the governing board failed to appropriately consider the charter request, or acted in an arbitrary manner in denying the request, the review panel shall request the governing board to reconsider the charter request."[562] The superintendent holds the tie-breaking vote.[563] If the district board reconsiders but still refuses to grant a charter, the petitioners may seek approval from the county board of education.[564] Within 30 days of the petitioner's request the county board must hold a public hearing on the application.[565] After the hearing and within 60 day of the petitioner's request, the county board must decide whether to grant the charter.[566]

California also allows district-wide conversion to charter schools, assuming the district consists of no more than 10 schools. Proposals to do this must be approved by 50 percent of the district's teachers and both the superintendent of public instruction and the state board of education.[567]

According to Colorado's legislation, "[t]he local board of education shall receive and review all applications for charter schools."[568] Incomplete applications may be returned to the applicants.[569] Prior to consideration by the board, "the application shall be reviewed by the district accountability commission."[570] "After giving reasonable public notice, the local board of education shall hold community hearings in the affected areas or the entire school district to assist the local board of education in its decision to grant a charter school application."[571] Within 60 days after receiving the application, the local board must rule on it at a public meeting.[572] The local board "may reasonably limit the number "of charter schools in the district,"[573] which does somewhat limit the initiative of school organizers.

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[558] CA § 47605 (b).
[559] CA § 47605 (i).
[560] CA § 47605 (j) (1).
[561] CA § 47605 (j) (1).
[562] CA § 47605 (j) (2).
[563] CA § 47605 (j) (2).
[564] CA § 47605 (j) (3).
[565] CA § 47605 (j) (3). This paragraph requires the county board to "hold a public hearing in the manner described in subdivision(b)."
[566] CA § 47605 (j) (3).
[567] CA § 47606.
[568] CO § 22-30.5-107 (1).
[569] CO § 22-30.5-107 (1).
[570] CO § 22-30.5-107 (1).

If the local board denies the charter, the applicant may appeal to the state board of education.[574] The appeal must be made within 30 days of the local board's decision.[575] Alternatively, the state board "may review decisions of any local board of education concerning charter schools" on its own motion.[576] Within 30 days of a request for appeal or its own motion "the state board, at a public hearing which may be held in the district where the proposed charter school is located, shall review the decision of the local board of education and make its findings. If the state board finds that the local board's decision was contrary to the best interests of the pupils, school district, or community, the state board shall remand such decision to the local board of education with written instructions for reconsideration thereof."[577] The local board must reconsider its decision and make a "final decision" within 30 days of the remand.[578]

If the board continues to deny the charter, the applicant may file an appeal with the state board within 30 days or the state board may initiate an appeal on its own motion.[579] Within 30 days of a request for appeal or its own motion "the state board, at a public hearing shall determine whether the final decision of the local board was contrary to the best interests of the pupils, school district, or community. If such a finding is made the state board shall remand such final decision to the local board of education with instructions to approve the charter application. The decision of the state board shall be final and not subject to appeal."[580]

If the appeal is of a local board decision to grant a charter, within 30 days of receipt of a notice of appeal or the state board's own motion, the state board must hold a public meeting to review whether the local board's decision was "arbitrary" or if the charter violates federal or state civil rights laws, violates a court order, threaten students' health and safety, violates the charter school legislation's cap on the number of charter schools in the state, or is not consistent with the equitable distribution of charter schools across the state.[581] "If such a determination is made, the state board shall remand such decision to the local board with instructions to deny the charter application. The decision of the state board is final and not subject to appeal."[582]

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[571] CO § 22-30.5-107 (2).
[572] CO § 22-30.5-107 (2).
[573] CO § 22-30.5-109 (1).
[574] CO § 22-30.5-107 (3).
[575] CO § 22-30.5-108 (2).
[576] CO § 22-30.5-108 (1).
[577] CO § 22-30.5-108 (3) (a).
[578] CO § 22-30.5-108 (3) (b).
[579] CO § 22-30.5-108 (3) (c), (d).
[580] CO § 22-30.5-108 (3) (d).

Arizona provides some of the basic requirements of due process. Approving authorities must accept or reject charter school applications within 90 days of submission.[583] There is no requirement for public hearings. If the approving authority rejects the application "it shall notify the applicant in writing of the reasons for the rejection."[584] If the Board of Education or the Board for Charter Schools rejects the application it must also provide "suggestions for improving the application."[585] "Applicants may submit revised proposals for reconsideration by the (approving authority.)"[586]

The New Mexico statute gives organizers the initiative in proposing a charter school, but requires individual schools to apply to the state board of education through their local school boards.[587] "In transmitting the application to the state board, the local school board may include a recommendation regarding the establishment of that charter school."[588] There is no appeals process, no provision for public hearings, and the statute does not specify a period within which the state board must decide on a charter.

Massachusetts places the initiative for charter schools with the organizers, but does not provide for an appeals process or public hearings. The Massachusetts statute requires charter school applications to be submitted to the secretary of education by February 15 of each year.[589] The secretary must review the applications by March 15.[590] The statute does not specifically state a date by which the secretary must decide whether to grant a charter. There is no appeal.

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[581] CO § 22-30.5-108 (4) (a) (I).
[582] CO § 22-30.5-108 (4) (a) (II).
[583] AZ § 15-183 (C) (1), (2).
[584] AZ § 15-183 (C) (1), (2).
[585] AZ § 15-183 (C) (2).
[586] AZ § 15-183 (C)(1), (2).
[587] NM § 22-8A-5 (A).
[588] NM § 22-8A-5 (A).
[589] MA ch. 71, § 89.
[590] MA ch. 71, § 89.

Georgia places the initiative with the school's organizers, but provides no appeals process and specifies no timetable for decision. Under Georgia's charter school statute, charters are approved by the State Board of Education.[591] "Each year, the state board must review petitions for charter school status received from local schools."[592] The statute establishes no time requirements for the board's decisions. After the teachers and parents have voted to pursue charter status, the local school board must approve the petition and forward it to the state board for decision.[593] If the local board does not approve the petition, it must nevertheless forward the petition to the state board, and inform the state board of the reasons for such disapproval.[594] The state board may request a hearing to obtain additional information, but the statute appears to require local board approval before the state board may grant a charter.[595]

Michigan's charter school legislation puts charter school organizers in a more reactive mode than they would be in many other states. The statute requires that charter school contracts be let "on a competitive basis."[596] This tends to place the initiative with the approving authority, which establishes some set of expectations about charter schools that applicants must satisfy. Michigan also does not require public hearings. In the case of most potential approving authorities, the statute allows for no appeal. The Michigan statute does provide multiple avenues of approval and, in the case of proposals turned down by the local school district, the possibility of placing a charter school contract on the ballot.[597] If a school district board refuses to grant a contract and the applicant obtains the requisite number of signatures required to place the contract on the ballot, the question shall be placed on the school district's "next annual school election at least 60 days after receiving the petition."[598] This tends to offset the lack of an appeals process, but the statute sets no timetable for decisions by any of the public authorities allowed to contract a charter school.

The Minnesota statute also places the initiative with the local school board, and is weak in the specification of a timetable. But the statute does allow for appeals. A "local school board must file an affidavit with the state board of education stating its intention to authorize (a charter school). The affidavit must state the terms and conditions under which the (local board) would authorize (the school). The state board must approve or disapprove the (local board's) proposed authorization within 30 days of receipt of the affidavit. Failure to obtain state board approval precludes a (local board) from authorizing the (charter school) that was the subject of the affidavit."[599] "If a school board elects not to sponsor a (charter school), the applicant may appeal the school board's decision to the state board of education if two members of the school board voted to sponsor the school."[600] The state board may then sponsor the school. The Minnesota statute does not specify how long the local board can wait to decide on sponsorship after submission of a charter school application, nor does it specify any timetable for the appeals process or any requirement for public hearings. However, if the proposal is made by a predominantly Caucasian applicant to establish a charter school in which one-half or more of the students are expected to be non-Caucasian, a state advisory committee with a non-Caucasian majority must review and make recommendations about the proposal prior to approval by any potential sponsor.[601]

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[591] GA § 22-30.5-255 (d).
[592] GA § 22-30.5-255 (d).
[593] GA § 22-30.5-255 (c) (1), (g).
[594] GA § 22-30.5-255 (g).
[595] GA § 22-30.5-255 (g).
[596] MI § 503 (1).
[597] MI § 503 (2).
[598] MI § 503 (2).

Kansas follows a somewhat complicated multistep approval process. The statute requires charter school organizers to submit petitions to the local school board by December 1 of the school year before they propose to open their school.[602] Only after approval by the local board are they considered by the State Board of Education. "After receiving a satisfactory petition, the local board must give notice of the time, date and place for...a public hearing on the petition."[603] The board must rule on the petition within 30 days after hearing or by February 1 of the preceding school year, whichever is earlier.[604] When the State Board of Education is notified of the local board's approval of the petition, it "shall determine whether the charter school is in compliance with applicable state and federal laws and rules and regulations."[605] The state board must approve petitions that are in compliance; petitions not in compliance "shall not be approved until the state board's objections have been satisfied."[606]

Only after a petition has been approved by the Kansas State Board of Education does the local board consider the waivers from local and state policies, rules, and regulations requested by charter school organizers in the petition. "If the [local] board of education determines that the reasons for seeking such waivers are meritorious and legitimately related to successful operation of the charter school, the board...may grant waiver of school district policy and may make application, on behalf of the charter school, to the state board...for waiver of state board rules and regulations or statutory requirements. The state board may consider the application...and approve deny or amend and approve the application."[607] The charter as approved constitutes the terms under which the charter school shall operate.

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[599] MN § 120.064, Subd. 4 (b).

[600] MN § 120.064, Subd. 4 (a).

[601] MN § 120.064, Subd. 6.

[602] KS § 4 (b).

[603] KS § 4 (e).

[604] KS § 4 (e).

[605] KS § 4 (e).

[606] KS § 4 (e).

Under the Wisconsin statute, "local school boards request the state superintendent for approval to establish...charter schools."[608] Thus, in a formal sense, the initiative for the formation of charter school lies with the local board rather than the potential charter school petitioner. The state superintendent is obligated to approve the first 10 requests received.[609] Then, "[i]f a school board has received approval [from the state superintendent], within 30 days after receiving a petition...the local school board shall hold a public hearing on the petition.... After the hearing, the school board may grant the petition."[610] One reasonable inference from this wording is that a decision is expected within 30 days. In addition, "[t]he school board may on its own initiative contract with an individual group to operate a school as a charter school."[611] There is no appeals process and the board is not specifically required to rule on a petition by a date certain.

Missouri's statute places the initiative with the local school board. Management teams bid competitively for the right to manage a school site.[612] There is no appeals process, and the legislation does not require public hearings or establish a timetable for board decisions.

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[607] KS § 4 (f).

[608] WI § 118.40 (1).

[609] WI § 118.40 (1).

[610] WI § 118.40 (2) (a).

[611] WI § 118.40 (3).

[612] MO § 18.2.

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Approval Criteria and Considerations

Beyond requiring that a charter contain certain provisions listed in the statute, the Arizona legislation leaves the decision to grant a charter entirely to the approving authority.[613]

Michigan's statute restricts the several approving authorities' power to issue charter school contracts to the area within their geographic boundaries, and requires contracts to contain certain provisions.[614] Most important from the standpoint of autonomy, the statute states that "contracts shall be issued on a competitive basis taking into consideration the resources available for the (school), the population to be served by the proposed (school), and the educational goals to be pursued by the (proposed school).[615] The legislation does not require a potential sponsor to issue a contract under particular circumstances, but this wording suggests that a proposal will be chosen from among a group of bidders.

Missouri also requires that management contracts for charter schools be bid on a competitive basis.[616] The statute states no specific requirements regarding contract provisions. It appears to imply an expectation that the boards of school districts chosen to participate in the program will in fact let a contract for management of the school to the winner of the bidding process.[617]

The Massachusetts statute contains certain required provisions for charter school contracts, but otherwise establishes no decision criteria for the secretary of education, who makes the sole and "final determination on granting charter school status and may condition charters on the charter school's taking certain actions or maintaining certain conditions."[618]

Under Minnesota's statute, before a local school board may sponsor a charter school, the contract must meet certain conditions approved in advance by the state board and contain certain provisions specified in the statute.[619] (In the case of conversions, the proposal must also be supported by 90 percent of the teachers at the school.)[620] The criteria for state board approval are not specified in the statute. In addition, and as noted above, if the proposal is made by a predominantly Caucasian applicant to establish a charter school in which one-half or more of the students are expected to be non-Caucasian, a state advisory committee with a non-Caucasian majority must review and make recommendations about the proposal prior to approval by any potential sponsor.[621] The criteria governing this review and recommendations are not specified in the statute.

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[613] AZ § 15-183.

[614] MI §§ 502 (2), 503 (3).

[615] MI § 503 (1).

[616] MO § 18.2 (1).

[617] See MO § 18.1.

[618] MA ch. 71, § 89.

[619] MN § 120.064, Subds. 4, 5.

[620] MN § 120.064, Subd. 4a.

Assuming that a proposal meets the requirements regarding provisions and potentially teacher support, that it has been reviewed by the advisory committee, and that the state board has approved the conditions under which the local board would sponsor a charter school, the local board may approve the contract.[622] The Minnesota statute specifies no criteria under which the local board must approve the contract. If a majority of the local board votes against the proposal, but two or more members vote to approve, the charter school applicant may appeal to the state board for sponsorship.[623] The statute specifies no criteria for state board approval.

Georgia's legislation requires a petition from a school to convert to charter school status to contain certain provisions and evidence of the required number of teachers and parents votes for the proposal, and that the petition be approved by the local school before submission to the state board, which actually issues the charter.[624] If the local school board declines to support the charter school petition, it must inform the state board of the reasons, but the state board is not authorized to approve the charter.[625] Assuming the charter application is supported by the school board and otherwise meets the statutory requirements, Georgia's legislation provides no specific approval criteria for the state board's decision.

Under the New Mexico statute, individual schools apply to the State Board of Education for conversion to charter schools through their local school board.[626] Like Georgia, New Mexico requires that a petition from a school to convert to charter school status contain certain provisions and evidence of the required support from teachers and parents, but provides no specific conditions under which the state board must issue a charter.[627]

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[621] MN § 120.064, Subd. 6.

[622] MN § 120.064, Subd. 3.

[623] MN § 120.064, Subd. 3 (a).

[624] GA § 20-2-255 (c), (d).

[625] GA § 20-2-255 (e)-(g).

[626] NM § 22-8A-5 (A).

[627] NM § 22-8A-5 (B).

The Wisconsin legislation requires the state superintendent to approve the first 10 requests from local school boards to establish charter schools.[628] Applications to the local school board must incorporate certain provisions and be signed by the requisite number of teachers.[629] The school board must hold a public hearing "to consider the level of employee and parental support" for the proposed school.[630] It may then grant a charter.[631] The board may also issue a charter on its own initiative, without a hearing.[632] In neither instance does the statute establish additional conditions dictating approval. However, the statute also requires that a board "give preference" to charter schools serving at-risk pupils.[633]

In California the "school district governing board may grant a charter for the operation of a charter school...if it determines that the petition contains the requisite petitions and content requirements."[634] The statute directs that the district board "shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner...as academically low achieving."[635] The statute does not require the district board to grant a charter if the application contains the signatures and provisions specified in the legislation; the local board may add its own requirements.[636] The great discretion granted the governing board is reinforced by the standard of review employed by the review panel convened by county superintendents in the appeals process—"whether the governing board failed to appropriately consider the charter request, or acted in an arbitrary manner in denying the request."[637] The statute provides no other decision criteria for the county board of education, which may grant a charter if the district board refuses.[638]

Colorado's legislation appears to be generally biased towards approving charter school applications. The provision describing the legislature's intent contains the admonition that "the provisions of (the charter school statute) should be interpreted liberally to support the findings and goals of this section and to advance a renewed commitment by the state of Colorado to the mission, goals and diversity of public education."[639] The provision of the act dealing with negotiations over charter school financing and the supply of services by local school districts reinforces this inclination. "It is the intent of the general assembly that funding and service agreements...shall be neither a financial incentive nor a disincentive to the establishment of a charter school."[640] The statute also notes the legislature's "intent...that priority be given to charter school applications designed to increase the educational opportunities of at-risk pupils." [641] However, the statute also favors charter schools catering to at-risk pupils[642] and allows review on the basis of the geographic distribution of charter schools.[643]

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[628] WI § 118.40 (1).

[629] WI § 118.40 (1m) (b).

[630] WI § 118.40 (2)

[631] WI § 118.40 (2).

[632] WI § 118.40 (2m).

[633] WI § 118.40 (3) (d).

[634] CA § 47605 (b).

[635] CA § 47605 (h)

[636] Marcella R. Dianda and Ronald G. Corwin, *An Early Look at Charter Schools in California* (Southwest Regional Laboratory, April 1993), at 20.

[637] CA § 47605 (j) (2).

[638] CA § 47605 (j) (3).

[639] CO § 22-30.5-102 (2) (f).

Colorado requires that a charter school contract application be reviewed by the district accountability commission and contain certain provisions and evidence of community support,[644] but does not specifically require the local board of education to approve applications that meet those requirements.[645] Indeed, the board is entitled to deny a charter in order to "reasonably limit the number of charter schools in the district."[646] Moreover, the statute allows appeal of a local board's decision to grant a charter on the grounds that the grant is not consistent with an equitable distribution of charter schools across the state, among other reasons.[647]

The Colorado statute's appeals process incorporates a broad standard of review, and one that allows the state board to review the local board's action de novo. "If the state board finds that the local board's decision [to deny a charter] was contrary to the best interests of the pupils, school district or community" the state board may remand the decision to the local board for reconsideration and, if the local board refuses to grant a charter after reconsideration, may require the local board to grant the charter.[648]

Where the local board decides to grant a charter, the Colorado law permits the state board to overturn the decision if it is found to be "arbitrary and capricious," or if the proposed charter would violate civil rights laws or court orders, threaten pupil health and safety, would result in more than the permissible number of charter schools in the state (50), or if granting the charter would be inconsistent with the equitable distribution of schools.[649]

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[640] CO § 22-30.5-112 (2) (d).

[641] CO § 22-30.5-109 (3).

[642] CO § 22-30.5-109 (3).

[643] CO § 22-30.5-108 (4) (a) (I) (E).

[644] CO § 22-30.5-106.

[645] CO § 22-30.5-107 specifies a timetable for local board decisions but does not specify any decision criteria.

[646] CO § 22-30.5-109 (1).

[647] CO § 22-30.5-108 (4) (a) (I) (E).

[648] CO § 22-30.5-108 (2) (a), (d).

The Kansas statute requires a petition to contain certain provisions,[650] but provides both the local school board and the State Board of Education with broad discretion in the approval of charter school petitions and specific waivers. With regard to approval of a charter school petition, the local board is only required to determine whether it is "satisfactory" and not "incomplete."[651] If the local board approves the petition, the state board "shall" approve the petition if it is "in compliance with applicable state and federal laws and rules and regulations," another somewhat vague standard conferring broad discretion on state authorities.[652] Once a petition has been approved by the state board, the local board considers whether requests for specific waivers contained in the petition "are meritorious and legitimately related to successful operation of the charter school."[653] If the board finds that they are meritorious and legitimate, the state board may consider whether to grant the waivers.[654] The statute provides no standard for decisions by the state board on waivers, leaving the decision completely to the discretion of the state authorities. However, the statute does provide for preferential treatment by the state board to "educational enhancement plans" instituted by local school districts "encompassing the establishment or enhancement and operation of charter schools that principally target at risk pupils."[655]

THE POSSIBILITY OF CHARTER REVOCATION AND RENEWAL

Duration of the Initial Contract

Michigan has the only statute which provides for a contract of indefinite duration subject to termination only for failure to conform to a charter's contractual terms. It contains no reference to contractual length. Nor does it discuss renewal. Instead, the statute requires that the contract contain procedures and grounds for revocation.[656] Most states establish relatively brief contractual periods, with the possibility of renewal.

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[649] CO § 22-30.5-108 (3) (a).

[650] KS § 4 (c) (10) - (15).

[651] KS § 4 (e).

[652] KS § 4 (e).

[653] KS § 4 (f).

[654] KS § 4 (f).

[655] KS § 10 (d).

[656] MI § 503 (4) (f).

Arizona establishes a five year period for the initial charter.[657] California, Colorado, Massachusetts, New Mexico, and Wisconsin establish a five year maximum for the initial contract.[658] Missouri does not specifically state any maximum or minimum contract period, but the experimental program is to last five years starting no later than July 1, 1995.[659] The statute implies that the contract will be for the length of the program.[660] Kansas establishes a charter period of three years.[661] Georgia and Minnesota provide for a duration of not more than three years.[662]

Criteria for Revocation and Renewal

The Kansas statute contains objective criteria only for charter revocation. (The statute does not explicitly identify renewal criteria.)

> The (local) board of education shall revoke the charter of a school if the school:
>
> (1) Materially violates provisions contained in the charter;
>
> (2) fails to meet or pursue the educational objectives contained in the charter;
>
> (3) fails to comply with the fiscal accountability procedures as specified in the charter; or
>
> (4) violates provisions of law that have not been waived by the state board of education.[663]

No charter school statute explicitly promotes autonomy by requiring that a charter be renewed if objective criteria like those discussed above are met. Most statutes contain objective criteria for termination and renewal, but also grant approving authorities considerable discretion in termination and renewal decisions on more subjective grounds.

The Arizona statute contains only general criteria on which approving authorities must base decisions to renew a charter. An approving authority "may deny the request for renewal if, in its judgment, the charter school has failed to complete the obligations of the contract or comply with this article."[664] On the other hand, the statute also states that "the charter may be renewed for successive periods of seven years if the charter school is in compliance with its own charter and the provisions of this article."[665] This implies that approving authorities have the power not to renew a charter at their own discretion.

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[657] AZ § 15-183 (I).

[658] CA § 47607 (a); CO § 22-30.5-110 (1); MA ch. 71, § 89; NM § 22-8A-4 (B); WI § 118.40 (3) (B).

[659] MO § 18.1.

[660] See MO § 18.3.

[661] KS § 5 (a).

[662] GA § 20-2-255 (b) (1); MN § 120.064, Subd. 5 (9).

[663] KS § 5 (a).

Of particular concern to the value of autonomy are provisions like that in the Colorado statute, in which a school that meets its contractual obligations, achieves the specified educational outcomes, meets accepted accounting standards, and stays well within the law, might still see its contract terminated or not renewed because the local board of education determines that "it is not in the interest of the pupils residing within the school district to continue operation of the charter school."[666]

The Processes of Revocation and Renewal

No charter school statute requires that a contract be renewed. The arrangement most conducive to autonomy is Michigan's, which specifies no time limit on a charter school contract, and which could permit a school to remain operating indefinitely unless the contract is terminated for good cause.[667] As for termination procedures, however, the Michigan statute provides no more than a requirement that the approving authority find a violation of the conditions discussed in the above subsection.[668]

The next approach most favorable to autonomy requires public review and the right of appeal. Colorado's legislation contains a well-defined procedure, with an appeals process. It requires that revocation and renewal decisions be made following the same procedures used for deciding on approval of the initial application.[669]

Following this general guidance, where the local board decides to revoke or declines to renew a charter, the Colorado statute requires that prior to consideration by the local school board, "the (matter of renewal or revocation) shall be reviewed by the district accountability commission."[670] "After giving reasonable public notice, the local board of education shall hold community hearings in the affected areas or the entire school district to assist the local board of education in its decision to (revoke or renew) a charter school application."[671] Within 60 days after receiving the application, the local board must rule on it at a public meeting.[672]

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[664] AZ § 15-183 (I).

[665] AZ § 15-183 (J).

[666] CO 22-30.5-110 (4). The fact that Colorado provides for an appeals process which allows the state board to review the local board's decision de novo ameliorates the effect of this criterion to some extent. See CO § 22-30.5-108 (2) (a), (d).

[667] MI § 503 (4) (f).

[668] MI § 507.

[669] CO § 22-30.5-110 (5).

[670] CO § 22-30.5-107 (1).

If the local board revokes or declines to renew the charter, the charter holder may appeal to the State Board of Education.[673] Under the Colorado statute, the appeal must be made within 30 days of the local board's decision.[674] Alternatively, the state board "may review decisions of any local board of education concerning charter schools" on its own motion.[675] Within 30 days of a request for appeal or its own motion "the state board, at a public hearing which may be held in the district where the proposed charter school is located, shall review the decision of the local board of education and make its findings. If the state board finds that the local board's decision was contrary to the best interests of the pupils, school district, or community, the state board shall remand such decision to the local board of education with written instructions for reconsideration thereof."[676] The local board must reconsider its decision and make a "final decision" within 30 days of the remand.[677]

If the board again votes to revoke or decline to renew the charter, the charter holder may file an appeal with the state board within 30 days or the state board may initiate an appeal on its own motion.[678] Within 30 days of a request for appeal or its own motion "the state board, at a public hearing shall determine whether the final decision of the local board was contrary to the best interests of the pupils, school district, or community. If such a finding is made the state board shall remand such final decision to the local board of education with instructions to approve the charter application. The decision of the state board shall be final and not subject to appeal."[679]

If the appeal is of a local board decision to renew a charter, within 30 days of receipt of a notice of appeal or the state boards own motion, the Colorado state board must hold a public meeting to review whether the local board's decision was "arbitrary," or "failed to appropriately consider the charter request," or if the charter violates federal or state civil rights laws, violates a court order, threatens students health and safety, violates the charter school legislation's cap on the number of charter schools in the state, or is not consistent with the equitable distribution of charter schools across the state.[660] "If such a determination is made, the state board shall remand such decision to the local board with instructions to deny the charter application. The decision of the state board is final and not subject to appeal."[661]

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[671] CO § 22-30.5-107 (2).
[672] CO § 22-30.5-107 (2).
[673] CO § 22-30.5-107 (3).
[674] CO § 22-30.5-108 (2).
[675] CO § 22-30.5-108 (1).
[676] CO § 22-30.5-108 (3) (a).
[677] CO § 22-30.5-108 (3) (b).
[678] CO § 22-30.5-108 (3) (c), (d).
[679] CO § 22-30.5-108 (3) (d).

Kansas provides for the non-renewal or termination of a charter. At the end of a school's three year charter, a local school board "may" decide to "nonrenew the charter and discontinue operation of the school," or "renew the charter and continue operation of the school, subject to approval of the state board of education."[662] The statute specifies no criteria for nonrenewal decisions. To revoke a school's charter, the local school board must make the particular findings of fact discussed in the subsection above.[663]

The Kansas statute also establishes a process for both non-renewal and revocation:

> Prior to nonrenewing or revoking a charter, a board of education shall hold a hearing on the issues in controversy. Spokespersons for the charter school shall be provided the opportunity to present information refuting the basis upon which the nonrenewal or revocation is premised. At least 30 days notice must be provided to representatives of the charter school prior to the hearing. Within 60 days after the hearing the board of education shall announce its decision on the nonrenewal or revocation issue. The board may abandon the proposed nonrenewal or revocation, nonrenew or revoke the charter, or continue recognition of the charter contingent upon compliance with specified conditions. The decision of a (local) board of education to nonrenew or revoke a charter is not subject to appeal....[664]

Minnesota also has a procedure for non-renewal and revocation. The charter school's approving authority, subject to state board approval, may choose not to renew a contract for any of the grounds discussed in the subsection above (violation of the contract, failure to achieve specified educational outcomes, failure to meet generally accepted standards of fiscal management, or violations of the law.)[665] However, before an approving authority unilaterally terminates a contract, it must notify the school in writing and provide details as to why.[686] The school's board of directors has the right to an informal hearing before the approving authority prior to the authority's final action.[687] The approving authority must take final action "by the last day of classes in the school year."[688]

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[660] CO § 22-30.5-108 (4) (a) (I).

[661] CO § 22-30.5-108 (4) (a) (II).

[662] KS § 5 (a).

[663] KS § 5 (a) (1) -(4).

[664] KS § 5 (b).

[665] MN § 120.064, Subd. 21 (a).

Arizona's statute has no revocation procedure. It requires an approving authority to give a charter school "written notice of its intent not to renew the charter school's request for renewal" 12 months before the natural termination of its contract.[689] The statute provides for no appeal but does not prohibit the charter school from applying to another approving authority for a five year charter.[690] Should the first approving authority decide to continue the charter, "it may be renewed for successive periods of seven years."[691]

New Mexico does not contemplate revocation but does permit renewal on the same basis as the initial application.[692] Under the New Mexico statute, individual schools apply to the State Board of Education for conversion to charter school status through their local school board.[693] Renewal would follow the same procedure. The local school board may include a recommendation regarding the establishment of that charter school.[694] There is no appeals process, no provision for public hearings, and the statute does not specify a period within which the state board must decide on renewal.

Most statutes contain little in the way of discussion about procedures for renewal or revocation. The California statute does not specify a process for considering renewal or revocation. It merely allows renewal[695] and states that the charter may revoked if the approving authority finds that the charter school meets any of the objective criteria discussed above.[696] Apparently the decision of the approving authority is final. Unlike the initial approval process, in the case of revocation or nonrenewal the statute makes no mention of any appeal from the school district to the county superintendent.

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[686] MN § 120.064, Subd. 21 (b).

[687] MN § 120.064, Subd. 21 (b).

[688] MN § 120.064, Subd. 21 (b).

[689] AZ § 15-183 (I).

[690] AZ § 15-183 (I).

[691] AZ § 15-183 (J).

[692] NM § 22-8A-4 (B).

[693] NM § 22-8A-5 (A).

[694] NM § 22-8A-5 (A).

[695] CA § 47607 (a)

[696] CA § 47607 (b).

Similarly, Wisconsin contemplates renewal but offers no procedure.[697] The statute permits the school board to revoke on finding any of the conditions discussed in the previous subsection.[698] There is no discussion of appeal.

The Georgia legislation also takes this approach. It contemplates renewal but specifies no process.[699] The statute also allows the charter to be declared null and void if at any time the state board determines that the charter school has failed to fulfill the terms of the charter.[700] It also allows the school to revert to its former status if over two-thirds of the faculty and staff vote to withdraw the charter.[701] There is no appeal but it is the state board, not the local board, which makes the decision. The local school board is not authorized to revoke the charter.

Massachusetts allows the secretary of education to decide to revoke or not renew a charter if the school has not fulfilled conditions imposed by the secretary in connection with the grant of the charter, or if the school has violated any of its charter provisions.[702] The statute allows the secretary to place a "charter school on probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked."[703] The statute provides for no appeal of the secretary's decision.

The Missouri statute discusses neither renewal nor revocation. The pilot program is scheduled to last only five years.[704]

Duration and Review of the State's Charter School Program

The New Mexico, Michigan, and Minnesota statutes provide no termination date for the states' charter school programs and do not require any reports to the legislature on the program.

Arizona's charter school legislation contains no termination date for the charter school program. The statute gives the State Board for Charter Schools a general responsibility "to recommend legislation pertaining to charter schools to the legislature."[705] The board terminates on July 1, 2004.[706]

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[697] WI § 118.40 (3) (b).

[698] WI § 118.40 (5).

[699] GA § 20-2-255 (b) (1).

[700] GA § 20-2-255 (f).

[701] GA § 20-2-255 (f).

[702] MA ch. 71, § 89.

[703] MA ch. 71, § 89.

[704] MO 18.1.

Kansas, Georgia, California, Wisconsin, and Massachusetts have no limits on the period during which charter schools may be established, but do require general reports to the legislature on the program by a specified date.

Kansas does not limit the period during which charter schools may be established. It does require local boards of education to provide the state board with an annual evaluation of the impact of charter schools on their district's educational system.[707] The state board is required to compile these reports, "including specification of school district and state board waivers granted" to each school, and provide them to the governor and legislature.[708]

Georgia does not limit the duration of its charter school program, but the state board of education is required to report to the legislature "each year on the status of the charter school program."[709]

The California charter school statute has no time limit on the charter school program, but requires the state department of education to "review the educational effectiveness" of the program by January 1, 1999, and "report to the Legislature...with recommendations to modify, expand or terminate that approach."[710] The statute was passed in 1992[711] and schools were formed in 1993, so the department will have at most six years of data on which to base its report. This is one year longer than the maximum period allowed for an initial charter contract, which is five years, meaning many schools in the program may be in their second contract period when the review nears completion.

Wisconsin allows "the joint legislative audit committee to direct the legislative audit bureau to perform a financial and performance audit of the charter school program, which must be completed by January 1, 2000."[712] The Wisconsin statute was passed in 1993, but schools will not be established until at least the fall of 1994, giving the bureau six years to complete its audit, one year more than the maximum charter.

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[705] AZ §§ 15-182 (E) (1), 41-3004.15 (B) (3).

[706] AZ § 41-3004.15.

[707] KS § 8 (b).

[708] KS § 8 (b).

[709] GA § 20-2-255 (i).

[710] CA § 47616.

[711] CA § 47600.

[712] WI § 118.40 (8).

The Massachusetts legislation allows charter schools to be opened beginning the 1995 school year, and calls for a review by the legislature in 1998.[713] That leaves three years for review; two years less than the maximum initial contract of five years. However, students enrolled in charter schools "shall have a right to continue in that school through its highest grade level unless expelled for cause."[714] Even if the state decided to terminate the charter school program, this provision suggests that individual schools would remain open for the sole purpose of educating previously enrolled students.

The Colorado statute allows charter schools to be established until July 1, 1997.[715] The statute is automatically repealed as of July 1, 1998.[716] The State Board of Education is required to report to the legislature on the program by January 1, 1997.[717] The statute also requires annual reports on the program from the State Department of Education.[718] Colorado's charter school statute was passed in 1993, but the first schools are unlikely to be established before the fall of 1994, so if a report is due to the legislature in January, 1997, charter schools have two and a half years to prove their value, and even less than that considering how long it takes to finalize and publish a report. This and the sunset provision conflict with the fact that Colorado allows initial charter school contracts to be as long as five years.[719] And unlike Massachusetts, the Colorado stature offers students enrolled in charter schools in 1998 no right to continue to the highest grade offered in the school.

Missouri's statute is characterized as a pilot program with a duration of five years, beginning no later than July 1, 1995.[720] "The commissioner of education shall develop a procedure for the evaluation of the new schools pilot project including recommended means for expanding desirable elements of the project to other school districts in the state."[721] This implies a five year period for review, and at least one report at the end of the project.

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[713] MA ch. 71, § 104.

[714] MA ch. 71, § 104.

[715] CO § 22-30.5-109 (1).

[716] CO § 22-30.5-114.

[717] CO § 22-30.5-113 (2).

[718] CO § 22-30.5-112 (5).

[719] CO § 22-30.5-110 (1).

[720] MO § 18.1.

[721] MO § 18.6.

B. COMPARISON OF STATUTORY PROVISIONS AFFECTING ACCOUNTABILITY

THE PROCESS OF BECOMING A CHARTER SCHOOL

Evidence of Community Support for the Proposed School

California requires that 10 percent of the teachers in the district or 50 percent of the teachers at any school in the district sign the petition to establish a charter school—new or converted.[722] Conversion of an entire district requires the support of 50 percent of the teachers in the district.[723]

In the case of conversion, the Wisconsin statute requires that the charter school petition be signed by not less than 10 percent of the teachers in a school district or 50 percent of the teachers in an individual school.[724] Under Georgia's legislation, petitions submitted to the state board by a local public school to convert to charter status must be approved first by over two-thirds of the teachers and over two-thirds of the parents voting on the subject, and by the local board of education.[725] New Mexico's statute implies that a charter application include evidence that not less than 65 percent of a school's teachers support conversion and that "parents of children in the proposed charter school have had substantial involvement in the development of the...proposal."[726] Minnesota's statute implies a requirement that a charter school application include evidence of support only in the case of conversion, where 90 percent of the teachers must approve the proposal.[727]

Many statutes are not so specific in their demands for evidence of community support. The Colorado statute is quite general in its statement of the requirement. It only directs that charter school applications contain "[e]vidence that an adequate number of parents, teachers, pupils, or any combination thereof support the formation of a charter school."[728] But the statute also requires that the application include a statement of the need for the proposed charter school in the school district.[729] Kansas requires that a charter school petition contain "a description of the level of interest and support on the part of school district employees, parents, and the community."[730]

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[722] CA § 47605 (a). According to Eric Premack the purpose of this provision is to assure approving authorities that the proposal has the support of teachers. It is not intended to give the teaching staff of a school a veto over any decision to convert an existing public school to charter status. Communication with the author.

[723] CA § 47606 (a).

[724] WI § 118.40 (1m) (a).

[725] GA § 20-2-255 (c) (1) - (3).

[726] NM § 22-8A-5 (B) (1) - (2).

[727] MN 120.064, Subd. 4a.

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Arizona, Massachusetts, Michigan, Missouri, and, except as noted above, Minnesota set no specific requirement that a charter school application contain evidence of community support. However, in Massachusetts the secretary of education is free to set such a requirement under the statute's grant of authority to "establish the information needed in an application for the approval of a charter school."[731] Michigan also offers charter school applicants the opportunity to put the question of establishing the school before the school district's voters if the local board refuses to do so.[732]

A Description of the School's Educational Program

Colorado's charter school statute requires inclusion of a "mission statement...consistent with the principles of the general assembly's [description of legislative intent.]"[733] It also directs that the application for a charter contain "[a] description of the charter school's educational program, pupil performance standards, and curriculum, which must meet or exceed any content standards adopted by the school district and must be designed to enable each pupil to achieve such standards."[734] The statute goes on to require specific statements of the "charter school's plan for evaluating pupil performance, [and] the types of assessments that will be used to measure pupil progress towards achievement of [pupil performance] standards."[735] Moreover, the statute requires that the contract include "the procedures for taking corrective action in the event that pupil performance at the charter school falls below such standards."[736]

No other statute requires so comprehensive a description of the applicant's educational approach. Arizona, Kansas, Wisconsin, California, Michigan, and Georgia require a description of the program, specific educational goals, and means of measuring the attainment of those goals.

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[728] CO 22-30.5-106 (1) (c).

[729] CO 22-30.5-106 (1) (d).

[730] KS § 4 (c) (2).

[731] MA ch. 71, § 89.

[732] MI § 503 (2).

[733] CO § 22-30.5-106 (1) (a).

[734] CO § 22-30.5-106 (1) (e).

[735] CO § 22-30.5-106 (1) (f).

[736] CO § 22-30.5-106 (1) (f).

Arizona permits a charter school application to include "a mission statement for the charter school,...and an outline of the criteria designed to measure the effectiveness of the school."[737] The statute requires that the charter "shall ensure...the school provides a comprehensive program of instruction,"[738] and "designs a method to measure progress toward the pupil outcomes adopted by the State Board of Education...including participation in the essential skills tests and the nationally norm-referenced achievement test as designated by the State Board and the completion and distribution of an annual report card."[739]

The charter school legislation of Kansas demands that applicants explain how their approach will improve educational outcomes. It requires that the petition to establish a school describe the "educational program,"[740] specify "program goals and the measurable pupil outcomes consonant with achieving the goals,"[741] and explain "how pupil performance...will be measured, evaluated, and reported."[742] A charter school "must be focused on outcomes or results and must participate in the [state's] quality performance accreditation process" unless specifically exempted by the local and state boards of education.[743]

Wisconsin's charter school legislation requires that the petition include "[a] description of the educational program of the school,"[744] "[t]he methods the school will use to enable pupils to meet the educational goals [established by the state],"[745] and "[t]he method by which pupil progress in attaining the educational goals...will be measured."[746]

In California, the contract must include "[a] description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an 'educated person' in the 21st century, and how learning best occurs."[747] The goals identified in a California applicant's "program shall include the objective of enabling pupils to become self-motivated, competent, and life-long learners."[748] The contract also must explain "[t]he measurable pupil outcomes identified for use by the charter school."[749] These pupil outcomes constitute "the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge and attitudes specified as goals in the school's educational program."[750] Moreover, the contract must define "[t]he method by which pupil progress in meeting those pupil outcomes is to be measured."[751] Finally, "[c]harter schools shall meet the statewide performance standards and conduct pupil assessments required" under other (now defunct) portions of the state education code.[752]

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[737] AZ § 15-183 (A).
[738] AZ § 15-183 (E) (3).
[739] AZ § 15-183 (A).
[740] KS § 4 (c) (2).
[741] KS § 4 (c) (3).
[742] KS § 4 (c) (4).
[743] KS § 4 (d) (1).
[744] WI § 118.40 (1m) (b) (3).
[745] WI § 118.40 (1m) (b) (4).
[746] WI § 118.40 (1m) (b) (5).
[747] CA § 47605 (b) (1).

Michigan's statute requires that the application include the proposed articles of incorporation and bylaws for the school.[753] The bylaws must contain "[a] copy of the educational goals of the public school academy and the curriculum to be offered and methods of assessment to be used by the public school academy."[754] "To the extent applicable" the assessment method must include tests developed or sanctioned by the state, or one or more of the following nationally normed tests: the California Achievement Test, the Stanford Achievement Test, or the Iowa Test of Basic Skills."[755] These are also required in the contract itself.[756] The Michigan statute is also the only one explicitly requiring evaluation of the school, rather than just the students. It requires the contract to specify "the method to be used to monitor the public school academy's...performance in meeting its targeted educational outcomes."

Under Georgia's charter school legislation, a petition must "[d]escribe a plan for school improvement that addresses how the school proposes to work toward improving student learning and meeting national and state educational goals."[757] It also must "[o]utline proposed performance criteria that will be used...to measure progress of the school in improving student learning" and meeting the aforementioned education goals.[758] The charter itself must include "[c]lear performance based and student outcome based objectives and the means to measure those objectives on at least a yearly basis."[759]

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[748] CA § 47605 (b) (1).

[749] CA § 47605 (b) (2).

[750] CA § 47605 (b) (2).

[751] CA § 47605 (b) (2).

"In contrast to other education legislation in California, quality control and evaluative oversight by the CDE (California Department of Education) are noticeably absent from the charter schools legislation." Marcella R. Dianda and Ronald G. Corwin, *An Early Look at Charter Schools in California*, (Southwest Regional Laboratory, April 1993), at 21.

[752] CA § 47605 (c). Eric Premack points out that "California's charters are required to meet state performance standards. Such standards, however, have never been established and the statewide...assessment system, which charter schools were supposed to administer, sunsetted under the terms of the enabling legislation and thus these Charter Act requirements are now statutory deadwood." Communication with author.

[753] MI § 502 (3) (c), (d).

[754] MI § 502 (3) (d) (ii).

[755] MI § 502 (3) (d) (ii).

[756] MI § 503 (4).

[757] GA § 22-2-255 (c) (4).

The Minnesota statute only covers the charter school's educational program and outcomes. It requires a charter school contract to include "a description of a program that carries out one or more of the purposes [described in the section dealing with legislative intent]."[760] The statute also requires the contract to include the "specific outcomes pupils are to achieve,"[761] which must "at least meet the outcomes adopted by the state board of education."[762]

The Massachusetts statute leaves virtually all requirements up to the secretary of education, but does require that "[s]tudents in charter schools shall be required to meet the same performance standards, testing and portfolio requirements set by the board of education for students in other public schools."[763]

New Mexico's legislation requires that "the school proposing to become a charter school [submit] to the state board a comprehensive plan for implementing alternative education curricula at the school."[764] Depending on the state board's interpretation of the term "comprehensive," those seeking to organize a charter school might be directed to submit a plan as specific as that required under Colorado's statute, or something less detailed.

Missouri's statute only requires the state commissioner of education to develop a procedure to evaluate the overall project.[765] The legislation specifies no requirement as to the content of bids by management teams to local school districts to run the schools.

A Description of the School's Financial and Programmatic Plans

The Colorado charter school statute incorporates the most comprehensive statement of contractual requirements, while leaving substantial autonomy with the school in the area of financial management. It directs that the proposed contract include:

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[758] GA § 22-2-255 (c) (5).

[759] GA § 22-2-255 (f) (2).

[760] MN § 120.064, Subd. 5 (1).

[761] MN § 120.064, Subd. 5 (2).

[762] MN § 120.064, Subd. 10.

[763] MA ch. 71, § 89.

[764] NM § 22-8A-5 (B) (3).

[765] MO § 18.6.

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> Evidence that the plan for the charter school is economically sound for both the charter school and the school district, a proposed budget for the term of the charter, a description of the manner in which an annual audit of the financial and administrative operations of the charter school, including any services provided by the school district, is to be conducted...[766]

New Mexico's legislation requires that the charter school applicant "provide a detailed proposed budget to meet anticipated educational and administrative costs of the school."[767] However, the statute also requires the charter school applicant to submit its proposed annual budget to the local school board for approval,[768] a provision that pushes accountability to the point where it seriously degrades the school's autonomy.

Arizona charter schools are "subject to the same financial requirements as a school district," although the approving authority is permitted to grant exemptions to those requirements.[769] "The State Department of Education or the Office of the Auditor General may conduct financial, program or compliance audits."[770] Under the statute a charter school applicant may include in the application "a financial plan for the first three years of operation of the charter school."[771]

Kansas requires that charter school petitions contain "the proposed school budget,"[772] and a description of the "manner in which annual financial and program audits will be conducted."[773] Because both the local and state boards must approve the charter petition and have the power to exercise great discretion in their decision process, the Kansas statute appears likely to operate like that of New Mexico.

Aside from Massachusetts, the remaining state statutes incorporate at least one of the programmatic/financial oversight provisions required by Colorado. California, Minnesota, and Wisconsin require the applicant to explain the school's annual financial and programmatic audit procedures.[774] Minnesota also establishes the general rule that charter schools are subject to "the same financial audits, audit procedures and audit requirements as a school district."[775]

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[766] CO § 22-30.5-106 (1) (g).

[767] NM § 22-8A-5 (B) (4).

[768] NM § 22-8-6.1.

[769] AZ § 15-183 (E) (6).

[770] AZ § 15-183 (E) (6).

[771] AZ § 15-183 (A).

[772] KS § 4 (c) (15).

[773] KS § 4 (c) (9).

[774] CA § 47605 (b) (9); MN § 120.064. Subd. 5 (5); WI § 118.40 (1m) (b) (11).

Michigan's legislation includes only general requirements that the contract describe "the method to be used to monitor the public school academy's compliance with applicable law"[776] and "[s]pecific operating requirements."[777] This formulation leaves the specific requirements to the discretion of the approving authority, but probably implies regular financial and programmatic audits under standards similar to those governing audits for other public schools in the state.

Massachusetts has left most contractual requirements up to the secretary of education. However, the state's statute does require charter schools to provide an annual report containing a "discussion of progress made toward the achievement of goals set forth in the charter" and "a financial statement setting forth by appropriate categories, the revenue and expenditures for the years just ended."[778] The form of this report is within the secretary's discretion.[779]

Under the charter school statutes of Georgia and Missouri, financial management remains with the approving authorities. Neither state statute requires the charter school applicant to describe an annual programmatic audit, which goes more to progress on the educational plan than finances.

A Description of the School's Self-Governance

Michigan and Minnesota require that their charter schools be organized under some corporate structure, the terms of which are defined by state law. Michigan's legislation requires that the application contain the school's proposed articles of incorporation and bylaws, including the school's "governance structure."[780] These must be consistent with state statutes governing non-profit corporations, and include governance by a board of directors.[781] As noted above, under the Michigan statute, the approving authority determines the number of board members, how they will be selected, and the length of their term.[782] The statute also requires that the ultimate contract describe the school's "specific operating requirements (including) at least all of the matters set forth in the application for the contract."[783]

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[775] MN § 120.064, Subd. 8 (h).

[776] MI § 503 (4) (b).

[777] MI § 503 (4) (d).

[778] MA ch. 71, § 89.

[779] MA ch. 71, § 89.

[780] MI § 502 (3) (c), (d).

[781] MI § 502 (1).

The Minnesota statute specifies that the school will be organized as a cooperative or a non-profit corporation[784] and managed by a board of directors.[785] It also requires that "licensed teachers, employed at the school...must be a majority of the members of the board."[786]

Massachusetts gives a charter school the powers of a business corporation not inconsistent with the charter school statute and requires that it be managed by a board of trustees with the authority to supervise and control the school.[787] The statute does not require schools to be organized as any type of corporate entity, although the general counsel to the secretary has suggested that they be formed as non-profit corporations. Nevertheless, "the internal form of governance of a charter school shall be determined by the school's charter."[788] In addition, the charter school statute limits the board's power to a small extent by requiring it to determine the school's curriculum and budget in consultation with the teachers."[789]

Missouri specifies that charter school management "shall be vested in a five-member management team"[790] and that the team shall be responsible for personnel and staff decisions for the life of the pilot project.[791] The statute specifies that at least three members of each team must hold teaching certificates and that one member will be designated the school's principal.[792]

California, Colorado, Kansas, and Wisconsin require charter school applicants to explain how the school will be governed, although the specific content of that explanation is unclear, particularly with respect to rules of decision. According to the Kansas statute, the charter school petition must include a description of "the governance structure of the school, including the means of ensuring accountability to the [local] board of education."[793] That structure must be approved by the local and state boards of education.[794] Under Colorado's legislation, the charter schools "shall be administered and governed by a governing body in a manner agreed to by the charter school applicant and the local board of education."[795] The Colorado statute requires the application to incorporate "[a] description of the governance and operation of the charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school."[796] In California, the petition must include "[t]he governance structure of the school, including but not limited to, the process to be followed to ensure parental involvement."[797] Wisconsin's legislation directs the charter school petitioner to describe "[t]he governance structure of the school, including the method to be followed by the school to ensure parental involvement."[798]

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[782] MI § 503 (3).

[783] MI § 503 (4) (d).

[784] MN § 120.064. Subd. 4 (a).

[785] MN § 120.064. Subd. 4 (c).

[786] MN § 120.064. Subd. 4 (c).

[787] MA ch. 71. § 89.

[788] MA ch. 71. § 89.

[789] MA ch. 71. § 89.

[790] MO § 18.3.

[791] MO § 18.2 (1).

[792] MO § 18.2 (1).

[793] KS § 4 (c) (5).

The Arizona statute suggests that a charter school application "may include...a description of the charter school's organizational structure and the governing body."[799] The legislation does not demand any particular form of self-government. It merely requires that the charter "provides for a governing body for the charter school that is responsible for the policy and operational decisions of the charter school,"[800] and that the charter "include a description of the...method of school governance and the specific role and duties of the (approving authority)."[801]

Georgia and New Mexico are even less demanding in their requirement that applicants explain decision processes. Georgia's legislation requires that the charter school petition include descriptions of how the faculty, instructional staff, and parents will be involved in the development, implementation, and evaluation of the proposed educational program.[802] This implies that some description of the school's governance structure will be contained in the contract. New Mexico's legislation only requires the State Board of Education to find that parents had substantial involvement in the development of the charter proposal, and actually support conversion.[803]

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[794] KS § 4 (e), (f).

[795] CO § 22-30.5-104 (4).

[796] CO § 22-30.5-106 (1) (h).

[797] CA § 47605 (b) (4).

[798] WI § 118.40 (1m) (b) (6).

[799] AZ § 15-183 (A).

[800] AZ § 15-183 (E) (8).

[801] AZ § 15-183 (F).

[802] GA § 20-2-255 (c) (6), (7).

[803] NM § 22-8A-5 (B) (2).

A Description of the School's Admissions Policies

Colorado offers the organizers of a charter school no leeway on admissions. Under its statute, admission "must be open to any child who resides within the school district."[804] This unambiguous standard offers a clear guide to those responsible for monitoring compliance with state regulation under the charter school statute.

The legislation passed by Georgia, Missouri, and New Mexico contemplates only conversion of existing schools to charter status, with pupils drawn from the same community before and after conversion, and the school itself remaining a part of the school district. Consequently, the school's admissions policies remained unchanged and like those of the district to which the school belongs.

Arizona permits both conversions and new schools. The state's statute requires that a charter "ensure" that the school is "nonsectarian in its admission policies."[805] Otherwise, charter schools are not required to describe their admissions policies. However, the statute generally requires that the school admit pupils who submit a timely application, and use a lottery or similar system in the event of over enrollment.[806] Where a school is approved by the local school board, the school shall give preference to students within that district.[807]

California, Kansas, Minnesota, Wisconsin, and Michigan allow for conversion as well as the formation of new schools, but contemplate the existence of alternatives for students who choose not to attend a charter school. The Massachusetts statute is focused on the formation of new schools. Moreover, under the legislation of all these states charter schools are to a greater or lesser extent independent of the school district in which they are formed, and particularly of district rules, regulations, and procedures. Although under most state legislation, and consistent with their status as public schools, charter schools are generally restricted in their ability to exclude potential pupils; there may be some leeway in admissions policies. To the extent that such leeway exists, the goal of accountability would seem to require that the charter school applicant explain proposed criteria for admissions and the proposed admissions process before the charter is granted.

Consequently, these states do require applicants to explain their approach to admissions, although the distinction between criteria and process often is not made clear in the legislation. Massachusetts does allow its charter schools to "limit enrollment to...areas of focus of the school, such as mathematics, science or the arts," and charter schools "may establish reasonable academic standards as a condition for eligibility for applicants."[808] Under the Massachusetts legislation, the requirement that the charter school application "shall include the method for admission" is one of the few exceptions to the general rule that these requirements are to be set by the secretary of education.[809] California requires a description of the school's "[a]dmission requirements, if applicable."[810] Minnesota charter school contracts must contain the school's "admissions policies and procedures."[811] Wisconsin requires the petition to describe "[t]he requirements for admission to the school."[812] Michigan requires the school's bylaws to include its "admission policy and criteria."[813] Kansas requires the charter school to specify "criteria for admission of pupils."[814] In each of these cases, the approving authority must authorize these admissions policies as part of the charter or contract under which the school will operate.

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[804] CO § 22-30.5-104 (3).

[805] AZ § 15-183 (E) (2).

[806] AZ § 15-184 (A).

[807] AZ § 15-184 (A).

A Description of the School's Disciplinary Policies

The charter school statutes of Missouri, New Mexico, and Georgia contemplate a process allowing the conversion of existing schools to charter school status in which the preexisting student body remains at the school and the school itself remains a part of the school district under the jurisdiction of district authorities. In these cases, the charter school remains subject to the disciplinary mechanism designed by the district to assure protection of a student's right to due process where suspension or expulsion is contemplated by school authorities. Consequently, these statutes make no mention of a charter school's proposed disciplinary policies and procedures.

Where charter schools are in some fashion independent of the district, and particularly of its rules and regulations, as they are in Massachusetts, California, Kansas, Minnesota, and Wisconsin, the statutes require applicants to specify the school's proposed process for student suspension and expulsion. The Kansas and Minnesota statutes are the most specific. Kansas requires the charter school petition to describe "pupil suspension and expulsion policies, to the extent there is deviation from district wide policies."[815] Minnesota requires the school contract to contain an explanation of how the school will comply with the state's pupil fair dismissal act.[816] California requires that a charter school petition include "[t]he procedures by which pupils can be suspended or expelled."[817] Under the Wisconsin statute the contract must contain a clause explaining the school's "procedures for disciplining students."[818] The Massachusetts statute states that students "may be expelled from a charter school based on criteria determined by the board of trustees, and approved by the secretary of education, with the advice of the principal and teachers."[819]

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[808] MA ch. 71, § 89.

[809] MA ch. 71, § 89.

[810] CA § 47605 (b) (8).

[811] MN § 120.064, Subd. 5 (3).

[812] WI § 118.40 (1m) (b) (10).

[813] MI § 502 (3) (d) (iii).

[814] KS § 4 (c) (8).

[815] KS § 4 (c) (10).

Arizona's charter school legislation does not explicitly require the charter to incorporate the school's disciplinary policies, but it does demand that the charter "ensure...compliance with federal, state and local rules, regulations and statutes relating to civil rights,"[820] which encompass matters of student discipline. The State Department of Education is required to publish a list of relevant laws and "to notify charter schools of their responsibilities under this [provision]."[821] Student discipline policies are obvious candidates for this list.

Colorado and Michigan make no specific mention of any requirement that charter school applicants explain their proposed procedure for student discipline. The Colorado statute requires the applicant to bargain with the local board of education for exemptions to district regulations, and requires the school and local board to jointly request the state board to approve releases from state policies.[822] This implies that unless released from local and state disciplinary procedures by negotiation, the charter school shall remain subject to those procedures. To the extent that a charter school was exempted from existing disciplinary regulations, the statute requires the "contract to reflect all agreements regarding release of the charter school from school district policies."[823]

Description of the School's Legal Liability and Insurance Coverage

In Georgia, Missouri, and New Mexico, charter schools remain part of the local school district. Hence these states' statutes contain no reference to charter school liability or insurance.

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[816] MN § 120.064, Subd. 5 (6), Subd. 8 (g).

[817] CA § 47605 (b) (10).

[818] WI § 118.40 (1m) (b) (12).

[819] MA ch. 71, § 89.

[820] AZ § 15-183 (E) (1).

[821] AZ § 15-183 (E) (2).

[822] CO § 22-30.5-105 (2), (3).

[823] CO § 22-30.5-105 (3).

The charter school statutes of Colorado, Minnesota, and Wisconsin require an explanation of legal liability. Colorado's statute requires the charter school application to include "[a]n agreement between the parties regarding their respective legal liability and applicable insurance coverage."[824] In Wisconsin, a charter school contract includes a "description of...the types and limits of the liability insurance the school will carry."[825]

Under the Minnesota legislation, the charter school contract must contain provisions covering "assumption of liability"[826] and the "types and amounts of insurance coverage obtained" by the school.[827] The board of directors of a charter school may sue and be sued,[828] and "shall obtain at least the amount of and types of insurance required by the contract."[829] "Under the charter school statute, the state board of education, members of the state board, a sponsor, members of the board of a sponsor in their official capacity, and employees of a sponsor are immune from civil or criminal liability with respect to all activities related to an outcome-based school they approve or sponsor."[830]

Arizona charter schools may be sued[831] and their charters must "ensure compliance with federal, state and local, rules, regulations and statutes relating to...insurance."[832]

Charter school legislation in Massachusetts and Michigan does not require a provision explaining legal liability or insurance in the charter school's petition or contract. Under Michigan's statute, a charter school may sue or be sued,[833] but the school, its incorporators, board members, officers, employees, and volunteers have governmental immunity under state law.[834] The Massachusetts statute allows a charter school to sue or be subject to suit "to the same extent and upon the same conditions as a town."[835] Charter school employees are considered public employees, and the board of trustees a public employer, for the purposes of tort liability.[836]

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[824] CO 22-30.5-106 (1) (j).

[825] WI § 118.40 (1m) (b) (14).

[826] MN § 120.064, Subd. 5 (7).

[827] MN § 120.064, Subd. 5 (8).

[828] MN § 120.064, Subd. 23.

[829] MN § 120.064, Subd. 24.

[830] MN § 120.064, Subd. 24.

[831] AZ § 15-183 (H).

[832] AZ 15-183 (E) (1).

[833] MI § 501 (1).

[834] MI § 503 (6).

[835] MA ch. 71, § 89.

[836] MA ch. 71, § 89.

California's statute is weak in terms of its attention to matters of charter school liability and insurance. According to that state's charter school legislation, the district school board "may require that the petitioner...provide information regarding the proposed operation and potential effects of the school, including, but not limited to...potential civil liability effects upon the school and upon the school district."[837] The Kansas statute is completely silent as to liability and insurance.

Description of the School's Health and Safety Policies

Georgia, Missouri, and New Mexico do not require charter school applicants to describe their approach to health and safety because the statutes of these states do not make individual charter schools independent from the local school district. In these states, a charter school is subject to the same health and safety regulations as every other school in the district.

California requires that charter school petitions incorporate "provisions that the school will follow to ensure the health and safety of pupils and staff," including a requirement that school employees furnish the school with a criminal record summary.[838] In Kansas, charter school petitions must explain the "procedures that will be followed to ensure the health and safety of pupils and staff."[839] Under Wisconsin's legislation, the charter school petition must include a description of "the procedures that the school will follow to ensure the health and safety of the pupils."[840] The Massachusetts statute contains a more general provision, obligating charter schools to comply with "all applicable state and federal health and safety laws and regulations."[841]

Colorado and Minnesota do not require charter school applicants to explain proposed health and safety policies. As discussed earlier, the Colorado statute requires the charter school applicant to negotiate every single exemption from local and state regulations.[842] To the extent that a charter school was exempted from health and safety regulations, the statute requires the "contract to reflect all agreements regarding release of the charter school from

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Under Chapter 258 of the Massachusetts General Laws, the liability of board members is limited to $100,000 for unintentional torts (e.g., negligence). Liability for intentional torts is unlimited. Author's notes, October 22, 1994 conference, Worcester, Massachusetts, *Charter Schools: A Grassroots Approach to Education Reform*, remarks at the morning session on public laws applicable to charter schools.

[837] CA § 47605 (g).

[838] CA § 47605 (b) (6).

[839] KS § 4 (c) (7).

[840] WI § 118.40 (1m) (b) (8).

[841] MA ch. 71, § 89.

[842] CO § 22-30.5-104 (6).

school district policies."[843] The Minnesota statute is silent on the matter of health and safety in charter schools.

The charter of Arizona charter schools "shall ensure...compliance with federal state and local rules, regulations and statutes relating to...health and safety."[844]

Michigan's statute does not specifically address matters of health and safety, but the act contains a "catch all" provision requiring the contract to state "[a]n agreement that the (school) will comply...with all other state law applicable to public bodies and with federal law applicable to public bodies or school districts."[845]

THE MONITORING OF A CHARTER SCHOOL'S ONGOING OPERATIONS

Reporting Requirements for Individual Schools

The Massachusetts charter school statute explicitly requires an annual financial and programmatic report. The statute describes the requirement in detail:

> Each charter school shall submit to the secretary [of education], to each parent or guardian of its enrolled students, and to each parent or guardian contemplating enrollment in that charter school an annual report. The annual report shall be issued no later than August first of each year for the preceding school year. The annual report shall be in such form as may be prescribed by the secretary of education and shall include at least the following comments:
>
> (a) discussion of progress made toward achievement of the goals set forth in the charter;
>
> (b) a financial statement setting forth by appropriate categories, the revenue and expenditures for the year just ended. [846]

Georgia also specifically requires schools to produce annual reports. The Georgia statute gives charter schools no budgetary independence and so confines the reporting requirement to programmatics. Schools must "provide a yearly progress report to parents, the community, the local board, and the state board which indicates the progress made by the charter school in the previous year in meeting performance objectives."[847]

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[843] CO § 22-30.5-105 (3).

[844] AZ § 15-183 (E) (1).

[845] MI § 502 (3) (g).

[846] MA ch. 71, § 89.

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Minnesota requires schools to "report at least annually" to their approving authority and the state board information required by the authority and the state board.[848] Because the statute also requires school contracts to include "requirements and procedures for program and financial audits,"[849] the annual reporting requirement impliedly incorporates data on the school's educational program and financial condition. These reports are public data under Minnesota law.[850]

California, Wisconsin, and Kansas impliedly require annual reports on the condition of a charter school's program and finances. All three require that charter school petitions contain "a description of the manner in which annual audits of the financial and programmatic operations of the school are to be conducted."[851] Presumably, the results of these audits will be contained in a report. The statute is silent as to the recipients of the audit information, and hence says nothing about the recipient of the reports. Presumably, the report will go to the approving authority.

The Colorado statute requires an annual audit of a charter school's "financial and administrative operations,"[852] and so like California and Wisconsin implies some form of annual report. Like those two states, however, Colorado does not state who shall receive the results of the audits. Presumably, they will go to the approving authority, in this case the local school board.

The Colorado statute also requires a report on the charter school's financial status and programmatic success when the school's charter comes up for renewal (no more frequently than once every three years):

> (2) A charter school's renewal application submitted to the local board of education shall contain:

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[847] GA § 20-255-255 (d) (3).

[848] MN § 120.064, Subd. 14.

[849] MN § 120.064, Subd. 5 (5).

[850] MN § 120.064, Subd. 14.

[851] CA § 47605 (b) (9); KS § 4 (c) (9); WI § 118.40 (1m) (b) (11).

[852] CO 22-30.5-106 (1) (g)

(a) a report on the progress of the charter school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the initial approved charter application; and

(b) a financial statement that discloses the cost of administration, instruction, and other spending categories that is understandable to the general public and that will allow comparisons of such costs to other schools or other comparable organizations, in a format required by the state board of education. [853]

The Arizona, Missouri, Michigan, and New Mexico statutes contain no reporting requirements on the part of the individual school. However, Arizona requires a charter to "ensure" that the school is subject to the same audit requirements as school district.[854]

Few state statutes explicitly require or allow the financial and programmatic audits underlying these reports to be carried out by independent or state authorities. Minnesota specifically grants such audit authority to state bodies. "The department of education, state auditor, or legislative auditor may conduct financial, program or compliance audits."[855] Arizona's statute permits the state Department of Education or the Office of the Auditor General to conduct financial, program and compliance audits.[856]

Such authority is implicit in the Missouri statute's requirement that the commissioner of education develop procedures for evaluating schools.[857] Similarly, Michigan specifically makes the approving authority responsible to "oversee...compliance with the contract and all applicable law."[858] The Kansas statute also impliedly gives such authority to the local board of education with the requirement that the district annually evaluate charter school operations for the state board of education.[859]

Given that charter schools in Georgia and New Mexico remain part of the local school system, auditing authority would appear to remain with the district.

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[853] CO § 22-30.5-110 (2).

[854] AZ § 15-183 (E) (6).

[855] MN § 120.064, Subd. 8 (h).

[856] AZ § 15-182 (E) (1).

[857] MO § 18.6.

[858] MI § 507.

[859] KS § 8 (b).

Frequency and Content of State Agency Reports on the Charter School Program

Under the Colorado statute, both the State Department of Education and the State Board of Education are required to issue reports. The State Department of Education is directed to "prepare an annual report and evaluation for the governor and the [legislature] on the success or failure of the charter schools, their relationship to other school reform efforts, and suggested changes in state law necessary to strengthen or change the charter school program."[860] The State Board of Education is required to report to the legislature on the overall program by January 1, 1997.[861] The Colorado state board must compile the local boards' evaluations of charter schools and "review information regarding the regulations and policies from which charter schools were released [under the act] to determine if the releases assisted or impeded the charter schools in meeting their stated goals and objectives."[862] In addition, the board must "compare the performance of charter school pupils with the performance of ethnically and economically comparable groups of pupils in other public schools who are enrolled in academically comparable courses."[863]

Kansas requires local school boards to evaluate the impact of charter schools on the district and submit those evaluations to the State Board of Education annually.[864] The state board must "review, assess and compile the evaluations...and shall submit the compilation...and other relevant material, including specification of school district and state board waivers granted with respect to the operation of each charter school, to the governor and the legislature."[865]

Wisconsin allows "the joint legislative audit committee to direct the legislative audit bureau to perform a financial and performance audit of the charter school program, which must be completed by January 1, 2000."[866]

Georgia, California, Massachusetts, and Missouri require state education authorities to report on the charter school program, but the nature of the reporting requirement is vague. Georgia's State Board of Education is required to report to the legislature "each year on the status of the charter school program."[867] The California charter school statute requires the State Department of Education to "review the educational effectiveness" of the program by

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[860] CO § 22-30.5-112 (5).
[861] CO § 22-30.5-113 (2).
[862] CO § 22-30.5-113 (1).
[863] CO § 22-30.5-113 (3).
[864] KS § 8 (b).
[865] KS § 8 (b).
[866] WI § 118.40 (8).
[867] GA § 20-2-255 (i).

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January 1, 1999, and "report to the Legislature...with recommendations to modify, expand or terminate that approach."[868] The Massachusetts legislation calls for a review by the legislature in 1998.[869] Missouri requires "[t]he commissioner of education to develop a procedure for the evaluation of the...project including recommended means for expanding desirable elements of the project to other school districts in the state."[870] Presumably, the report will be due when the project ends in 2000.

The Arizona, New Mexico, Minnesota, and Michigan statutes provide no termination date and do not require any report to the legislature on the program. They all provide for accountability by the individual school by requiring periodic renewal of the charter, and all but New Mexico contemplate the possibility of revocation.

Arizona's statute contains no requirement that any state agency make reports on that state's charter school program. The legislation implies that the responsibility for such reports lies with the State Board for Charter Schools. That board is responsible for "recommending legislation pertaining to charter schools to the legislature."[871]

THE POSSIBILITY OF CHARTER REVOCATION AND RENEWAL

Duration of the Charter

Michigan allows for a charter of indefinite duration. This is not necessarily contrary to the goal of accountability, if the statute provides for ongoing review of the charter school's educational program and financial condition, and makes clear the possibility of termination if contractual standards and other criteria are not met. Michigan includes such provisions in its statute. It makes the approving authority responsible for ongoing oversight of the charter school[872] and requires that every contract contain a description of the procedure and grounds for revocation.[873]

Most statutes establish a maximum duration for a charter school contract of three or five years, with the possibility of renewal. Arizona, California, Colorado, Massachusetts, New

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[868] CA § 47616.

[869] MA ch. 71, § 104.

[870] MO § 18.6.

[871] AZ § 15-182 (E) (1).

[872] MI § 507.

[873] MI § 503 (4) (f).

Mexico, and Wisconsin establish a five year maximum for the initial contract.[874] Arizona establishes a seven year term for charter renewals.[875] Kansas provides for a three year charter.[876] Georgia and Minnesota provide for a duration of not more than three years.[877] These states provide for a renewal period equal to that of the original contract.[878]

The Missouri statute implies a contractual period of five years, but does not explicitly preclude a shorter period.[879] The entire pilot program is set to last only five years, and the statute does not discuss the possibility of renewal.[880]

Criteria for Revocation and Renewal

New Mexico permits renewal on the same basis as the initial application, but provides no specific conditions under which the state board must renew a charter.[881] Missouri's legislation contemplates neither revocation nor renewal. Every statute but those of New Mexico and Missouri provides some means of terminating a charter school contract on the general grounds that the school violated the contract.[882] Missouri's statute does not explicitly contemplate renewal.

Under the Kansas statute, a charter may be revoked by a local school board for material violations of charter provisions.[883] California and Colorado allow the school district to revoke or decide against renewal for "material violations of conditions, standards or procedures" in their application.[884] Massachusetts allows revocation by the secretary of education "if the school has not fulfilled any of the conditions imposed by the secretary...in connection with the grant or the school has violated any provision of its charter."[885] However, Massachusetts leaves the "procedures and guidelines for revocation and renewal" to the secretary of education.[886] Wisconsin allows revocation if "[t]he school board finds the charter school violated its contract with the school board,"[887] or any provision of the charter school statute.[888] Minnesota does not specifically allow revocation by an approving authority for violations of the contract in general, but does permit it "for other good cause shown."[889] Georgia requires that the charter contain a means "of declaring the charter null and void...if, at any time in the opinion of the state board, the school enjoying charter status fails to fulfill the terms of the charter."[890] Michigan permits revocation if the approving authority finds that one or more grounds for revocation contained in the contract exists.[891]

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[874] AZ § 15-183 (I); CA § 47607 (a); CO § 22-30.5-110 (1); MA ch. 71, § 89; NM § 22-8A-4 (B); WI § 118.40 (3) (B).

[875] AZ § 15-183 (J).

[876] KS § 5 (a).

[877] GA § 20-2-255 (b) (1); MN § 120.064, Subd. 5 (9).

[878] CA § 47607 (a); CO § 22-30.5-110 (1); MA ch. 71, § 89; NM § 22-8A-4 (B); WI § 118.40 (3) (B); GA § 20-2-255 (b) (1); MN § 120.064, Subd. 5 (9).

[879] MO §§ 18.1, 18.4.

[880] MO § 18.1.

[881] NM § 22-8A-4 (B0.

[882] NM § 22-8A-5 (B).

[883] KS § 5 (a) (1).

[884] CA § 47607 (b) (1); CA § 22-30.5-110 (3) (a).

[885] MA ch. 71, § 89.

[886] MA ch. 71, § 89.

Arizona permits the approving authority to deny charter renewals if the "school has failed to complete the obligations of the charter or comply with this article."[892] Approving authorities are not required to deny a renewal on these grounds, and the school has 12 months to convince another approving authority to act as a sponsor.[893] The statute does not address revocation.

Charter school statutes also specifically allow revocation or nonrenewal if the school does not meet the educational outcomes contained in the contract. California allows revocation where the school has "[f]ailed to meet or pursue any of the pupil outcomes identified in the charter petition."[894] Colorado permits it when the school has "[f]ailed to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter application."[895] Kansas permits revocation for a failure "to meet or pursue" educational objectives.[896] Minnesota allows termination or nonrenewal for "failure to meet the requirements for pupil performance contained in the contract."[897] Wisconsin's legislation permits revocation if "pupils enrolled in the school failed to make sufficient progress toward attaining educational goals" specified by the state.[898] Michigan allows revocation on the grounds of a "failure...to abide by and meet the educational goals set forth in the contract."[899] New Mexico, Georgia, Massachusetts, and Missouri do not mention of this possibility.

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[887] WI § 118.40 (5) (a).

[888] WI § 118.40 (5) (d).

[889] MN § 120.064, Subd. 21 (b) (1) (4).

[890] GA § 20-2-255 (f) (1).

[891] MI § 507 (d).

[892] AZ § 15-183 (I).

[893] AZ § 15-183 (I).

[894] CA § 47607 (b) (2).

[895] CO § 22-30.5-110 (3) (b).

[896] KS § 5 (a) (2).

[897] MN § 120.064, Subd. 21 (b) (1).

[898] WI 118.40 (5) (b).

Most legislation also specifically authorizes revocation if, in the terms of the California, Colorado, Wisconsin, and Minnesota statutes, the school fails to meet "generally accepted accounting standards of fiscal management."[900] Michigan's legislation differs only in that it refers to "generally accepted *public sector* accounting principles."[901] Kansas permits a charter to be terminated for failing to comply with fiscal accountability procedures specified in the charter.[902]

New Mexico, Georgia, Massachusetts, and Missouri make no reference to revocation on the grounds of a failure to conform to any such standard. Under the New Mexico, Missouri, and Georgia legislation, financial management remains largely with the school district, so accounting standards are not relevant. The Massachusetts statute leaves the secretary of education free to establish such a requirement. The statute requires the charter school to produce an annual financial statement, which suggests that the secretary could establish financial reporting standards and make noncompliance a grounds for revocation of a charter.[903]

A violation of the law is also generally considered grounds for terminating or refusing to renew a charter school contract. California allows revocation or nonrenewal if the approving authority finds that the charter school "[v]iolated any provision of the law."[904] The statutes of Colorado,[905] Minnesota,[906] and Michigan[907] contain similar provisions. Kansas permits revocation if the school "violates provisions of law that have not been waived by the State Board of Education."[908] Georgia, Massachusetts, Missouri, Wisconsin, and New Mexico have no such provision in their charter school statutes.

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[899] MI § 507 (a).

[900] CA § 47607 (b) (3); CO 22-30.5-110 (3) (c); WI § 118.40 (5) (c); MN § 120.064, Subd. 21 (b) (2).

[901] MI § 507 (c).

[902] KS § 5 (a) (3).

[903] MA ch. 71, § 89.

[904] CA § 47607 (b) (4).

[905] CO § 22-30.5-110 (3) (d).

[906] MN § 120.064, Subd. 21 (b) (3).

[907] MI § 507 (b).

[908] KS § 5 (a) (4).

Colorado and Minnesota also allow revocation and nonrenewal on less specific grounds. Colorado's statute enables a local school board to decide against renewal even if the school has met its contractual obligations,[909] made reasonable progress towards achievement of pupil performance standards,[910] met generally accepted standards of fiscal management,[911] and violated no law,[912] if it determines that renewal "is not in the interest of the pupils residing within the school district."[913] In addition to the grounds for revocation and nonrenewal discussed above, Minnesota allows these decisions on the more general basis of "other good cause shown."[914]

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[909] CO § 22-30.5-110 (3) (a).

[910] CO § 22-30.5-110 (3) (b).

[911] CO § 22-30.5-110 (3) (c).

[912] CO § 22-30.5-110 (3) (d).

[913] CO § 22-30.5-110 (4).

[914] MN § 120.064, Subd. 21 (b) (4).

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C.ARIZONA

1994 Ariz. ALS 2.
Ariz. Rev. Stat. Ann. §§ 15-101, 15-181 - 189

15-101. Definitions

In this title, unless the context otherwise requires:

3. "Charter school" means a public school established by contract with a district governing board, the state board of education or the state board for charter schools pursuant to article 8 of this chapter to provide learning that will improve pupil achievement.

15. "Private school," means a nonpublic institution where instruction is imparted.

17. "School" means a public institution established by a school district or by a county school superintendent where instruction is imparted.

18. "School district" means a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools....

15-181. Charter schools; purpose; scope

A. Charter schools may be established pursuant to this article to provide a learning environment that will improve pupil achievement. Charter schools provide additional academic choices for parents and pupils. Charter schools may consist of new schools or all or any portion of an existing school.

B. Charter schools shall comply with all provisions of this article in order to receive state funding as prescribed in section 15-185.

15-182. State board for charter schools; membership; terms; compensation; duties

A. The state board for charter schools is established consisting of the following members:

1. The superintendent of public instruction or the superintendent's designee.

2. Two members of the state board of education who are appointed by the governor pursuant to section 38-211.

3. Three members of the general public, each of whom shall reside in a neighborhood where a significant number of children reside who meet the eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free lunches, who are appointed by the governor pursuant to section 38-211.

4. Two members of the business community who are appointed by the governor pursuant to section 33-211.

5. Three members of the legislature who shall serve as advisory members and who are appointed jointly by the President of the Senate and the Speaker of the House of Representatives.

B. The superintendent of public instruction shall serve a term on the state board for charter schools that runs concurrently with the superintendent's term of office. The members appointed pursuant to subsection A, paragraphs 2 and 5 of this section shall serve staggered four year terms on the state board for charter schools that begin and end on the third Monday in January and that run concurrently with their respective terms of office. Members appointed pursuant to subsection

A, paragraphs 3 and 4 of this section shall serve staggered four year terms that begin and end on the third Monday in January.

C. The state board for charter schools shall annually elect a president and such other officers as it deems necessary from among its membership.

D. Members of the state board for charter schools are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

E. The state board for charter schools shall:

1. Exercise general supervision over charter schools sponsored by the board and recommend legislation pertaining to charter schools to the legislature.
2. Grant charter status to qualifying applicants for charter schools pursuant to section 15-183.
3. Adopt and use an official seal in the authentication of its acts.
4. Keep a record of its proceedings.
5. Adopt rules for its own government.
6. Determine the policy of the board and the work undertaken by it.
7. Delegate to the superintendent of public instruction the execution of board policies.
8. In conjunction with the state board of education, prepare a budget for expenditures necessary for the proper maintenance of the board and the accomplishment of its purpose.

F. The state board for charter schools may:

1. Contract.
2. Sue and be sued.

15-183. Charterschools;application;requirements;immunity;exemptions;renewal ofapplication;reprisal

A. An applicant seeking to establish a charter school shall submit a written proposal to a proposed sponsor as prescribed in subsection C of this section. The proposal may include a mission statement for the charter school, description of the charter school's organizational structure and the governing body, a financial plan for the first three years of operation of the charter school, a description of the charter school's hiring policy, the name of the charter school's applicant or applicants and requested sponsor, a description of the charter school's facility and the location of the school, a description of the grades being served and an outline of criteria designed to measure the effectiveness of the school.

B. The sponsor of a charter school may contract with a public body, private person or private organization for the purpose of establishing a charter school pursuant to this article.

C. The sponsor of a charter school may be either a school district governing board, the state board of education or the state board for charter schools, subject to the following requirements:

1. An applicant for a charter school may submit its application to a school district governing board, which shall either accept or reject sponsorship of the charter school within ninety days. An applicant may submit a revised application for reconsideration by the governing board. If the governing board rejects the application, the governing board shall notify the applicant in writing

of the reasons for the rejection. The applicant may request, and the governing board may provide, technical assistance to improve the application.

2. The applicant may submit the application to the state board of education or the state board for charter schools. The state board of education or the state board for charter schools shall review the application submitted by the applicant within ninety days and may approve the charter if the application satisfactorily meets the requirements of this article. The state board of education or the state board for charter schools may each sponsor up to twenty-five charter schools each fiscal year. If the state board of education or the state board for charter schools rejects the preliminary application, the state board of education or the state board for charter schools shall notify the applicant in writing of the reasons for the rejection and of suggestions for improving the application. An applicant may submit a revised proposal for reconsideration by the state board of education or the state board for charter schools. The applicant may request, and the state board of education or the state board for charter schools may provide, technical assistance to improve the application.

D. A district governing board has no legal authority over or responsibility for a charter school sponsored by the state board of education or the state board for charter schools.

E. The charter of a charter school shall ensure the following:

1. Compliance with federal, state and local rules, regulations and statutes relating to health, safety, civil rights and insurance. The department of education shall publish a list of relevant rules, regulations and statutes to notify charter schools of their responsibilities under this paragraph.

2. That it is nonsectarian in its programs, admission policies and employment practices and all other operations.

3. That it provides a comprehensive program of instruction for at least a kindergarten program or any grade between grades one and twelve, except that a school may offer this curriculum with an emphasis on a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language.

4. That it designs a method to measure pupil progress toward the pupil outcomes adopted by the state board of education pursuant to section 15-741.01 including participation in the essential skills tests and the nationally standardized norm-referenced achievement test as designated by the state board and the completion and distribution of an annual report card as prescribed in chapter 7, article 3 of this title.

5. That, except as provided in this article and in its charter, it is exempt from all statutes and rules relating to schools, governing boards and school districts.

6. That it is subject to the same financial requirements as a school district including the uniform system of financial records as prescribed in chapter 2, article 4 of this title, procurement rules as prescribed in section 15-213 and audit requirements. A school's charter may include exceptions to the requirements of this paragraph that are necessary as determined by the district governing board, the state board of education or the state board for charter schools. The department of education or the office of the auditor general may conduct financial, program or compliance audits.

7. Compliance with all federal and state laws relating to the education of children with disabilities in the same manner as a school district.

8. That it provides for a governing body for the charter school that is responsible for the policy and operational decisions of the charter school.

F. The charter of a charter school shall include a description of the charter school's personnel policies, personnel qualifications and method of school governance and the specific role and duties of the sponsor of the charter school.

G. The charter of a charter school may be amended at the request of the governing body of the charter school and on the approval of the sponsor.

H. Charter schools may contract, sue and be sued.

I. An approved plan to establish a charter school is effective for five years from the first day of operation. At the conclusion of the first four years of operation, the charter school may apply for renewal. The sponsor may deny the request for renewal if, in its judgment, the charter school has failed to complete the obligations of the contract or comply with this article. A sponsor shall give written notice of its intent not to renew the charter school's request for renewal to the charter school at least twelve months before the expiration of the approved plan to allow the charter school an opportunity to apply to another sponsor to transfer the operation of the charter school. If the operation of the charter school is transferred to another sponsor, the five year period shall be repeated.

J. After renewal of the charter at the end of the five year period described in subsection I of this section, the charter hay be renewed for successive periods of seven years if the charter school and its sponsor deem that the school is in compliance with its own charter and the provisions of this article.

K. A charter school that is sponsored by the state board of education or the state board for charter schools may not be located on the property of a school district unless the district governing board grants this authority.

L. A governing board or a school district employee who has control over personnel actions shall not take unlawful reprisal against another employee of the school district because the employee is directly or indirectly involved in an application to establish a charter school. A governing board or a school district employee shall not take unlawful reprisal against an educational program of the school or the school district because an application to establish a charter school proposes the conversion of all or a portion of the educational program to a charter school. As used in this subsection, "unlawful reprisal" means an action that is taken by a governing board or a school district employee as a direct result of a lawful application to establish a charter school and that is adverse to another employee or an education program and:

1. With respect to a school district employee, results in one or more of the following:
   (a) Disciplinary or corrective action.
   (b) Detail, transfer or reassignment.
   (c) Suspension, demotion or dismissal.
   (d) An unfavorable performance evaluation.
   (e) A reduction in pay, benefits or awards.
   (f) Elimination of the employee's position without a reduction in force by reason of lack of monies or work.

(g) Other significant changes in duties or responsibilities that are inconsistent with the employee's salary or employment classification.

2. With respect to an educational program, results in one or more of the following:
   (a) Suspension or termination of the program.
   (b) Transfer or reassignment of the program to a less favorable department.
   (c) Relocation of the program to a less favorable site within the school or school district.
   (d) Significant reduction or termination of funding for the program.

15-184. Charter schools; admission requirements

A. A charter school shall enroll all eligible pupils who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade level or building. A charter school that is sponsored by a school district governing board shall give enrollment preference to eligible pupils who reside within the boundaries of the school district where the charter school is physically located. If capacity is insufficient to enroll all pupils who submit a timely application, the charter school shall select pupils through an equitable selection process such as a lottery.

B. Except as provided in subsection C, a charter school shall not limit admission based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language or athletic ability.

C. A charter school may limit admission to pupils within a given age group or grade level.

D. A charter school shall admit pupils who reside in the attendance area of a school or who reside in a school district that is under a court order of desegregation or that is a party to an agreement with the United States Department of Education Office for Civil Rights directed toward remediating alleged or proven racial discrimination unless notice is received from the resident school that the admission would violate the court order or agreement. If a charter school admits a pupil after notice is received that the admission would constitute such a violation, the charter school is not allowed to include in its student count the pupils wrongfully admitted.

15-185. Charter schools; financing

A. A charter school that is sponsored by a school district governing board shall receive per pupil expenditures equal to at least the average cost per pupil for the district as a whole. The uniform system of financial records shall include guidelines for determining the average cost per pupil for the district for the purposes of this section. A school district is not financially responsible for any charter school that is sponsored by the state board of education or the state board for charter schools.

B. A charter school that is sponsored by the state board of education or the state board for charter schools shall calculate a base support level as prescribed in section 15-943, a transportation support level as prescribed in section 15-945, a capital outlay revenue limit as prescribed in section 15-961 and a capital levy revenue limit as prescribed in section 15-962, except that:

1. Sections 15-941 and 15-942 do not apply to charter schools.

2. The student count for the first year of operation shall be determined initially using an estimated student count based on actual registration of pupils before the beginning of the school year.

After the first one hundred days in session for the first year of operation, the charter school shall revise the student count to be equal to the actual average daily membership, as defined in section 15-901, or the adjusted average daily membership, as described in section 15-902, of the charter school. Before the one hundredth day in session, the state board of education or the state board for charter schools may require a charter school to report periodically regarding pupil enrollment and attendance. A charter school shall revise its student count, base support level, transportation support level and capital outlay revenue limit before May 15. A charter school that overestimated its student count shall revise its budget before May 15. A charter school that underestimated its student count may revise its budget before May 15.

3. The transportation support level for the first year of operation shall be determined using an estimated transportation support level as prescribed in section 15-945 before the beginning of the school year. After the first one hundred days in session for the first year of operation, the charter school shall revise the transportation support level to be equal to the actual transportation support level of the charter school. Before the one hundredth day in session, the state board of education or the state board for charter schools may require a charter school to report periodically regarding the daily route mileage and the number of eligible students transported. A charter school that overestimated its transportation support level shall revise its budget before May 15. A charter school that underestimated its transportation support level may revise its budget before May 15.

4. A charter school that is sponsored by the state board of education or the state board for charter schools may utilize section 15-855 for the purposes of this section. The charter school and the department of education shall prescribe procedures for determining average daily attendance and average daily membership.

C. Equalization assistance for the charter school for the budget year shall be determined by adding the amount of the base support level, the transportation support level, the capital levy revenue limit and the capital outlay revenue limit for the budget year as calculated pursuant to this section.

D. The state board of education shall apportion state aid to the state treasurer for disbursement to each charter school that is sponsored by the state board of education or the state board for charter schools in an amount as determined by this subsection. The apportionments shall be as follows:

1. On July 1, one-third of the total amount to be apportioned during the fiscal year.
2. On October 15, one-twelfth of the total amount to be apportioned during the fiscal year.
3. On December 15, one-twelfth of the total amount to be apportioned during the fiscal year.
4. On January 15, one-twelfth of the total amount to be apportioned during the fiscal year.
5. On February 15, one-twelfth of the total amount to be apportioned during the fiscal year.
6. On March 15, one-twelfth of the total amount to be apportioned during the fiscal year.
7. On April 15, one-twelfth of the total amount to be apportioned during the fiscal year.
8. On May 15, one-twelfth of the total amount to be apportioned during the fiscal year.
9. On June 15, one-twelfth of the total amount to be apportioned during the fiscal year.

E. Charter schools that are sponsored by the state board of education or the state board for charter schools shall not charge tuition, levy taxes or issue bonds.

15-186. Charter schools; transportation provisions

A. Charter schools are subject to the transportation provisions prescribed in section 15-816.06.

B. The school district in which the charter school is physically located is considered a nonresident school district for the purposes of section 15-816.06 with respect to transportation of charter school pupils.

15-187. Charter schools; teachers; employment benefits

A. A teacher who is employed by or teaching at a charter school and who was previously employed as a teacher at a school district shall not lose any right of certification, retirement or salary status or any other benefit provided by law, by the rules of the governing board of the school district or by the rules of the board of directors of the charter school due to teaching at a charter school on the teacher's return to the school district.

B. A teacher who is employed by or teaching at a charter school and who submits an employment application to the school district where the teacher was employed immediately before employment by or at a charter school shall be given employment preference by the school district if both of the following conditions are met:

1. The teacher submits an employment application to the school district no later than three years after ceasing employment with the school district.
2. A suitable position is available at the school district.

15-188. Charter schools stimulus fund

A. The charter schools stimulus fund is established in the state treasury for the purpose of providing financial support to charter school applicants and charter schools for start-up costs and costs associated with renovating or remodeling existing buildings and structures. The fund consists of monies appropriated by the legislature and grants, gifts, devises and donations from any public or private source. The department of education shall administer the fund.

B. The state board of education shall adopt rules to implement the provisions of this section, including application and notification requirements. If sufficient monies are appropriated for this purpose, monies from the charter schools stimulus fund shall be distributed to qualifying charter school applicants and charter schools in the following manner:

1. Each qualifying charter school applicant or charter school shall be awarded an initial grant of up to one hundred thousand dollars during or before the first year of the charter school's operation. If an applicant for a charter school receives an initial grant pursuant to this paragraph and fails to begin operating a charter school within the next eighteen months, the applicant shall reimburse the department of education for the amount of the initial grant plus interest calculated at a rate of ten per cent a year.
2. Applicants for charter schools and charter schools that received initial grants pursuant to paragraph 1 may apply to the department of education for an additional grant of up to one

hundred thousand dollars. If an applicant for a charter school receives an additional grant pursuant to this paragraph and fails to begin operating a charter school within the next eighteen months, the applicant shall reimburse the department of education for the amount of the additional grant plus interest calculated at a rate of ten per cent a year. A reimbursement required by this paragraph is in addition to any reimbursement required by paragraph 1.

C. Monies in the charter schools stimulus fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

15-189. Charterschools;vacantbuildings;list

A. The department of education, in conjunction with the department of administration, shall annually publish a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by this state or by school districts in this state and that may be suitable for the operation of a charter school. The department of education shall make the list available to applicants for charter schools and to existing charter schools. The list shall include the address of each building, a short description of the building and the name of the owner of the building. Nothing in this section requires the owner of a building on the list to sell or lease the building or a portion of the building to a charter school or to any other school or to any other prospective buyer or tenant.

D.CALIFORNIA

Cal. Educ. Code §§47600-47616 (Deering 1993)

§ 47600. Citation of part

This part shall be known, and may be cited, as the "Charter Schools Act of 1992."

§ 47601. Legislative intent

It is the intent of the Legislature, in enacting this part, to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following:

(a) Improve pupil learning.

(b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.

(c) Encourage the use of different and innovative teaching methods.

(d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

(e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

(f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.

§ 47602. Limitation on number of charter schools; Conversion of private schools

(a) The total number of charter schools operating in this state in any school year shall not exceed 100, with not more than 10 charter schools in any single school district. For the purposes of implementing this section, the State Board of Education shall assign a number to each charter notice it receives pursuant to subdivision (g) of Section 47605, based on the chronological order in which the notice is received.

(b) No charter shall be granted under this part that authorizes the reversion of any private school to a charter school.

§ 47603. Effect of part on private funding

This part shall not be construed to prohibit any private person or organization from providing funding or other assistance to the establishment or operation of a charter school.

§ 47605. Petition; General requirements; Review of denial

(a) A petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. After the petition has been signed by not less than 10 percent of the teachers currently employed by the school district, or by not less than 50 percent of the teachers currently employed at one school of the district, it my be submitted to the governing board of the school district for review.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the board shall consider the level of employee and parental support for the petition. Following review of the petition and the public hearing, the governing board shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. A school district governing board may grant a charter for the operation of a school under this part if it determines that the petition contains the number of signatures required by subdivision (a), a statement of each of the conditions described in subdivision (d), and descriptions of all of, the following:

(1) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an `educated person' in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(2) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(3) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(4) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(5) The qualifications to be met by individuals to be employed by the school.

(6) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(7) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(8) Admission requirements, if applicable.

(9) The manner in which an annual audit of the financial and programmatic operations of the school is to be conducted.

(10) The procedures by which pupils can be suspended or expelled.

(11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(12) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(13) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(c) Charter schools shall meet the statewide performance standards and conduct the pupil assessments required pursuant to Section 60602.5.

(d) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board may require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects upon the school and upon the school district.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j)(1) If the governing board of the school district denies a charter, the county superintendent of schools, at the request of the petitioner or petitioners, shall select and convene a review panel to review the action of the governing board. The review panel shall consist of three governing board members from other school districts in the county and three teachers from other school districts in the county unless only one school district is located in the county, in which case the panel members shall be selected from school districts in adjoining counties.

(2) If the review panel determines that the governing board failed to appropriately consider the charter request, or acted in an arbitrary manner in denying the request, the review panel shall request the governing board to reconsider the charter request. In the case of a tie vote of the panel, the county superintendent of schools shall vote to break the tie.

(3) If, upon reconsideration, the governing board denies a charter, the county board of education, at the request of the petitioner or petitioners, shall hold a public hearing in the manner described in subdivision (b) and, accordingly, may grant a charter. A charter school for which a charter is granted by a county board of education pursuant to this paragraph shall qualify fully as a charter school for all funding and other purposes of this part.

§ 47606. Districtwide conversion to charter schools

(a) A school district may convert all of its schools to charter schools under this part only if it meets all of the following conditions:

(1) Fifty percent of the teachers within the school district sign the charter petition.

(2) The charter petition contains all of the requirements set forth in subdivisions (b), (c), (d), (e), and (f) of Section 47605 and a provision that identifies alternative public school attendance arrangements for pupils residing within the school district who choose not to attend charter schools.

(b) Notwithstanding subdivision (b) of Section 47605, the district wide charter petition shall be approved only by joint action of the Superintendent of Public Instruction and the State Board of Education.

§ 47607. Period of charter; Renewal; Revocation

(a) A charter may be granted pursuant to Sections 47605 and 47606 for a period not to exceed five years. A charter granted by a school district governing board or county board of education may be granted one or more subsequent renewals by that entity. Each renewal shall be for a period not to exceed five years. A material revision of the provisions of a charter petition may be made only with the approval of the authority that granted the charter.

(b) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds that the charter school did any of the following:

(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter petition.

(2) Failed to meet or pursue any of the pupil outcomes identified in the charter petition.

(3) Failed to meet generally accepted accounting standards of fiscal management.

(4) Violated any provision of law.

§ 47610. Exemption from laws governing school districts

A charter school shall comply with all of the provisions set forth in its charter petition, but is otherwise exempt from the laws governing school districts except as specified in Section 47611.

§ 47611. Participation in State Teachers' Retirement System

If a charter school chooses to participate in the State Teacher's Retirement System, all employees of the charter school who qualify for membership in the system shall be covered under the system, and all provisions of Part 13 (commencing with Section 22000) shall apply in the same manner as if the charter school were a public school in the school district that granted the charter.

§ 47612. Funding

(a) The Superintendent of Public Instruction shall make all of the following apportionments to each charter school for each fiscal year:

(1) From funds appropriated to Section A of the State School Fund for apportionment for that fiscal year pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24, an amount for each unit of regular average daily attendance in the charter school that is equal to the current fiscal year base revenue limit for the school district to which the charter petition was submitted.

(2) For each pupil enrolled in the charter school who is entitled to special education services, the state and federal funds for special education services for that pupil that would have been apportioned for that pupil to the school district to which the charter petition was submitted.

(3) Funds for the programs described in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, and Sections 63000 and 64000, to the extent that any pupil enrolled in the charter school is eligible to participate.

(b) A charter school shall be deemed to be under the exclusive control of the officers of the public schools for purposes of Section 8 of Article IX of the California Constitution, with regard to the appropriation of public moneys to be apportioned to any charter school, including, but not limited to, appropriations made for the purposes of subdivisions (a) and (b).

(c) A charter school shall be deemed to be a "school district" for purposes of Section 41302.5 and Sections 8 and 8.5 of Article XVI of the California Constitution.

§ 47615. Distribution of information

The State Board of Education shall distribute information announcing the availability of the charter school process described in this part to each school district, county office of education, and public postsecondary educational institution and, through press releases, to each major newspaper in the state.

§ 47616. Review of educational effectiveness

The State Department of Education shall review the educational effectiveness of the charter school approach authorized under this part and, not later than January 1, 1999, shall report to the Legislature accordingly with recommendations to modify, expand, or terminate that approach.

E.COLORADO

Colo. Rev. Stat. §§ 22-30.5-101 - 114 (1993)

22-30.5-101. Shorttitle

This article shall be known and may be cited as the "Charter Schools Act".

22-30.5-102. Legislativedeclaration

(1) The general assembly hereby finds and declares that:

(a) It is the obligation of all Coloradans to provide all children with schools that reflect high expectations and create conditions in all schools where these expectations can be met;

(b) Education reform is in the best interests of the state in order to strengthen the performance of elementary and secondary public school pupils, that the best education decisions are made by those who know the students best and who are responsible for implementing the decisions, and, therefore, that educators and parents have a right and a responsibility to participate in the education institutions which serve them;

(c) Different pupils learn differently and public school programs should be designed to fit the needs of individual pupils and that there are educators, citizens, and parents in Colorado who are willing and able to offer innovative programs, educational techniques, and environments but who lack a channel through which they can direct their innovative efforts.

(2) The general assembly further finds and declares that this article is enacted for the following purposes:

(a) To improve pupil learning by creating schools with high, rigorous standards for pupil performance;

(b) To increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low-achieving;

(c) To encourage diverse approaches to learning and education and the use of different and innovative teaching methods;

(d) To allow the development of different and innovative forms of measuring pupil learning and achievement;

(e) To create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;

(f) To provide parents and pupils with expanded choices in the types of education opportunities that are available within the public school system;

(g) To encourage parental and community involvement with public schools;

(h) To hold charter schools accountable for meeting state board and school district content standards and to provide such schools with a method to change accountability systems.

(3) In authorizing charter schools, it is the intent of the general assembly to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating all children within the public school system. The general assembly seeks to create an atmosphere in Colorado's public school system where research and development in developing different learning opportunities is actively pursued. As such, the provisions of this article should be interpreted liberally to support the findings and goals,of this section and to advance a renewed commitment by the state of Colorado to the mission, goals, and diversity of public education.

22-30.5-103. Definitions

(1) For purposes of this article: (a) "At-risk pupil" means a pupil who, because of physical, emotional, socioeconomic, or cultural factors, is less likely to succeed in a conventional educational environment.

(b) "Local board of education" means the school district board of education.

(c) "State board" means the state board of education.

22-30.5-104. Charterschool-requirements-authority

(1) A charter school shall be a public, nonsectarian, nonreligious, non-home-based school which operates within a public school district.

(2) A charter school shall be a public school which is part of the school district in which it is located and shall be accountable to the local board of education for purposes of ensuring compliance with applicable laws and charter provisions and the requirement of section 15 of article IX of the state constitution.

(3) A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services. A charter school shall be subject to any court-ordered desegregation plan in effect for the school district. Enrollment must be open to any child who resides within the school district.

(4) A charter school shall be administered and governed by a governing body in a manner agreed to by the charter school applicant and the local board of education.

(5) Except as otherwise provided in sections 22-32-115 and 22-53-104, a charter school shall not charge tuition.

(6) Pursuant to contract, a charter school may operate free from specified school district policies and state regulations. Upon request of the charter applicant, the state board and the local board of education shall provide summaries of such regulations and policies to use in preparing a charter school application. The department of education shall prepare the summary of state regulations within existing appropriations.

(7) (a) A charter school shall be responsible for its own operation including, but not limited to, preparation of a budget, contracting for services, and personnel matters.

(b) A charter school may negotiate and contract with a school district, the governing body of a state college or university, or any third party for the use of a school building and grounds, the operation and maintenance thereof, and the provision of any service, activity, or undertaking which the charter school is required to perform in order to carry out the educational program described in its charter. Any services for which a charter school contracts with a school district shall be provided by the district at cost.

(c) In no event shall a charter school be required to pay rent for space which is deemed available, as negotiated by contract, in school district facilities. All other costs for the operation and maintenance of the facilities used by the charter school shall be subject to negotiation between the charter school and the school district.

22-30.5-105. Charterschools-contractcontents-regulations

(1) An approved charter application shall constitute an agreement, and the terms thereof shall be the terms of a contract between the charter school and the local board of education.

(2) The contract between the charter school and the local board of education shall reflect all agreements regarding the release of the charter school from school district policies.

(3) The contract between the charter school and the local board of education shall reflect all requests for release of the charter school from state regulations. The local board of education and the charter school shall jointly request such release from the state board.

(4) A material revision of the terms of the contract may be made only with the approval of the local board of education and the governing body of the charter school.

22-30.5-106. Charterapplication-contents

(1) The charter school application shall be a proposed agreement and shall include:

(a) The mission statement of the charter school, which must be consistent with the principles of the general assembly's declared purposes as set forth in section 22-30.5-102 (2) and (3);

(b) The goals, objectives, and pupil performance standards to be achieved by the charter school;

(c) Evidence that an adequate number of parents, teachers, pupils, or any combination thereof support the formation of a charter school;

(d) A statement of the need for a charter school in a school district or in a geographic area within a school district;

(e) A description of the charter school's educational program, pupil performance standards, and curriculum, which must meet or exceed any content standards adopted by the school district in which the charter school is located and must be designed to enable each pupil to achieve such standards;

(f) A description of the charter school's plan for evaluating pupil performance, the types of assessments that will be used to measure pupil progress towards achievement of the school's pupil performance standards, the timeline for achievement of such standards, and the procedures for taking corrective action in the event that pupil performance at the charter school falls below such standards;

(g) Evidence that the plan for the charter school is economically sound for both the charter school and the school district, a proposed budget for the term of the charter, a description of the manner in which an annual audit of the financial and administrative operations of the charter school, including any services provided by the school district, is to be conducted, and a plan for the displacement of pupils, teachers, and other employees who will not attend or be employed in the charter school;

(h) A description of the governance and operation of the charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school;

(i) An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment have been addressed with affected employees and their recognized representative, if any;

(j) An agreement between the parties regarding their respective legal liability and applicable insurance coverage;

(k) A description of how the charter school plans to meet the transportation needs of its pupils and, if the charter school plans to provide transportation for pupils, a plan for addressing the transportation needs of low-income and academically low-achieving pupils.

(2) No person, group, or organization may submit an application to convert a private school or a non-public home-based educational program into a charter school or to create a charter school which is a non-public home-based educational program as defined in section 22-33-104.5.

22-30.5-107. Charterapplication-process

(1) The local board of education shall receive and review all applications for charter schools. The local board of education may establish a schedule for receiving applications and shall make a copy of any such schedule available to all interested parties upon request. If such board finds the charter school application is incomplete, the board shall request the necessary information from the charter applicant. The charter school application shall be reviewed by the district accountability committee prior to consideration by the local board of education.

(2) After giving reasonable public notice, the local board of education shall hold community meetings in the affected areas or the entire school district to obtain information to assist the local board of education in its decision to grant a charter school application. The local board of education shall rule on the application for a charter school in a public hearing, upon reasonable public notice, within sixty days after receiving the application.

(3) If a local board of education denies a charter school application, the charter applicant may appeal the denial to the state board pursuant to section 22-30.5-108.

22-30.5-108. Appeal - standardofreview - procedures

(1) Acting pursuant to its supervisory power as provided in section 1 of article IX of the state constitution, the state board, upon receipt of a notice of appeal or upon its own motion, may review decisions of any local board of education concerning charter schools in accordance with the provisions of this section.

(2) A charter applicant or any other person who wishes to appeal a decision of a local board of education concerning a charter school shall provide the state board and the local board of education with a notice of appeal within thirty days of the local board's decision.

(3) If the notice of appeal, or the motion to review by the state board, relates to a local board's decision to deny, refuse to renew, or revoke a charter, the appeal and review process shall be as follows:

(a) Within thirty days after receipt of the notice of appeal or the making of a motion to review by the state board and after reasonable public notice, the state board, at a public hearing which may be held in the district where the proposed charter school is located, shall review the decision of the local board of education and make its findings. If the state board finds that the local board's decision was contrary to the best interests of the pupils, school district, or community, the state board shall remand such decision to the local board of education with written instructions for reconsideration thereof . Said instructions shall include specific recommendations concerning the matters requiring reconsideration.

(b) Within thirty days following the remand of a decision to the local board of education and after reasonable public notice, the local board of education, at a public hearing, shall reconsider its decision and make a final decision.

(c) If the local board of education's final decision is still to deny, refuse to renew, or revoke a charter, a second notice of appeal may be filed with the state board within thirty days following such final decision.

(d) Within thirty days following receipt of the second notice of appeal or the making of a motion for a second review by the state board and after reasonable public notice, the state board, at a public hearing, shall determine whether the final decision of the local board of education was contrary to the best interests of the pupils, school district, or community. If such a filing is made, the state board shall remand such final decision to the local board with instructions to approve the charter application. The decision of the state board shall be final and not subject to appeal.

(4) If the notice of appeal, or the motion to review by the state board, relates to a local board's decision to grant a charter, the appeal and review process shall be as follows:

(a) (I) Within thirty days after receipt of the notice of appeal or the making of a motion to review by the state board and after reasonable public notice, the state board, at a public hearing which may be held in the district where the proposed charter school is located, shall review the decision of the local board of education and determine whether such decision was arbitrary capricious or whether the establishment or operation of the proposed charter school would:

(A) Violate any federal or state laws concerning civil rights;

(B) Violate any court order;

(C) Threaten the health and safety of pupils in the school district;

(D) Violate the provisions of section 32-30.5-109 (2), prescribing the permissible number of charter schools; or

(E) Be inconsistent with the equitable distribution of charter schools among school districts.

(II) If such a determination is made, the state board shall remand such decision to the local board with instructions to deny the charter application. The decision of the state board shall be final and not subject to appeal.

5) Nothing in this section shall be construed to alter the requirement that a charter school be a part of the school district in which it is located and accountable to the local board of education pursuant to section 22-30.5-104 (2).

22-30.5-109. Charterschools-restrictions-establishment-number

(1) School districts may, but shall not be obligated to, establish charter schools prior to the 1994-95 school year. A local board of education may reasonably limit the number of charter schools in the school district.

(2) (a) No more than fifty charters shall be granted prior to July 1, 1997, and at least thirteen of said fifty charters shall be reserved for charter school applications which are designed to increase the educational opportunities of at-risk pupils, as defined in section 22-30.5-103.

(b) Local boards of education which grant charter school applications shall report such action to the state board and shall specify whether or not such school is designed to increase the educational opportunities of at-risk pupils. The state board shall promptly notify the board of education of each school district when the limits specified in paragraph (a) of this subsection (2) have been reached.

(3) It is the intent of the general assembly that priority of consideration be given to charter school applications designed to increase the educational opportunities of at-risk pupils, as defined in section 22-30.5-103.

(4) If otherwise qualified, nothing in this article shall be construed to prohibit any institution certified as an educational clinic pursuant to article 27 of this title, on or before April 1, 1993, from applying to become a charter school pursuant to this article.

(5) Nothing in this article shall be construed to prevent a school in a school district which is comprised of only one school from applying to become a charter school pursuant to this article.

22-30.5-110. Charter schools - term - renewal of charter - grounds for nonrenewal or revocation

(1) A charter may be approved or renewed for a period not to exceed five academic years.

(2) A charter school renewal application submitted to the local board of education shall contain:

(a) A report on the progress of the charter school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the initial approved charter application; and

(b) A financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public and that will allow comparison of such costs to other schools or other comparable organizations, in a format required by the state board of education.

(3) A charter may be revoked or not renewed by the local board of education if such board determines that the charter school did any of the following:

(a) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter application;

(b) Failed to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter application;

(c) Failed to meet generally accepted standards of fiscal management; or

(d) Violated any provision of law from which the charter school was not specifically exempted.

(4) In addition, a charter may be not renewed upon a determination by the local board of education that it is not in the interest of the pupils residing within the school district to continue the operation of the charter school.

(5) A decision to revoke or not to renew a charter may be appealed pursuant to the provisions of section 22-30.5-108.

22-30.5-111. Charterschools-employeeoptions

(1) During the first year that a teacher employed by a school district is employed by a charter school, such teacher shall be considered to be on a one-year leave of absence from the school district. Such leave of absence shall commence on the first day of services for the charter school. Upon the request of the teacher, the one-year leave of absence shall be renewed for up to two additional one-year periods upon the mutual agreement of the teacher and the school district. At the end of three years, the relationship between the teacher and the school district shall be determined by the school district and such district shall provide notice to the teacher of the relationship.

(2) The local board of education shall determine by policy or by negotiated agreement, if one exists, the employment status of school district employees employed by the charter school who seek to return to employment with public schools in the school district.

(3) Employees of a charter school shall be members of the Public Employees' Retirement Association or the Denver Public Schools Retirement System, whichever is applicable. The charter school and the teacher shall contribute the appropriate respective amounts as required by the funds of such association or system.

22-30.5-112. Charterschools-financing-guidelines

(1) For purposes of the "Public School Finance Act of 1988", article 53 of this title, pupils enrolled in a charter school shall be included in the pupil enrollment of the district within which the pupil resides. The school district of residence shall report to the department of education the number of pupils included in the school district of residence's pupil enrollment that are actually enrolled in each charter school.

(2) (a) As part of the charter school contract, the charter school and the school district shall agree on funding and any services to be provided by the school district to the charter school. The charter school and the school district shall begin discussions on the contract using eighty percent of the district per pupil operating revenues. As used in this subsection (2), district "per pupil operating revenues" shall have the same meaning as that provided in section 22-53-103.

(b) All services centrally or otherwise provided by the school district including, but not limited to, food services, custodial services, maintenance, curriculum, media services, libraries, and warehousing shall be subject to negotiation between a charter school and the school district and paid for out of the revenues negotiated pursuant to paragraph (a) of this subsection (2).

(c) In no event shall the amount of funding negotiated pursuant to this subsection (2) be less than eighty percent of the district per pupil operating revenues multiplied by the number of pupils enrolled in the charter school.

(d) It is the intent of the general assembly that funding and service agreements pursuant to this subsection (2) shall be neither a financial incentive nor a financial disincentive to the establishment of a charter school.

(e) Fees collected from students enrolled at a charter school shall be retained by such charter school.

(3) Notwithstanding subsection (2) of this section, the proportionate share of state and federal resources generated by students with disabilities or staff serving them shall be directed to charter schools enrolling such students by their school districts or administrative units. The proportionate share of moneys generated under other federal or state categorical aid programs shall be directed to charter schools serving students eligible for such aid.

(4) The governing body of a charter school is authorized to accept gifts, donations, or grants of any kind made to the charter school and to expend or use said gifts, donations, or grants in accordance with the conditions prescribed by the donor; however, no gift, donation, or grant shall be accepted by the governing body if subject to any condition contrary to law or contrary to the terms of the contract between the charter school and the local board of education.

(5) The department of education will prepare an annual report and evaluation for the governor and the general assembly on the success or failure of charter schools, their relationship to other school reform efforts, and suggested changes in state law necessary to strengthen or change the charter school program.

(6) The department of education will provide technical assistance to persons and groups preparing or revising charter applications.

22-30.5-113. Charterschools-evaluation-report

(1) The state board shall compile evaluations of charter schools received from local boards of education. The state board shall review information regarding the regulations and policies from which charter schools were released pursuant to section 22-30.5-105 to determine if the releases assisted or impeded the charter schools in meeting their stated goals and objectives.

(2) The state board shall issue a report to the general assembly on its findings no later than January 1, 1997.

(3) In preparing the report required by this section, the state board shall compare the performance of charter school pupils with the performance of ethnically and economically comparable groups of pupils in other public schools who are enrolled in academically comparable courses.

22-30.5-114. Repeal of article

This article is repealed, effective July 1, 1998.

F.GEORGIA

Ga. Code Ann. §20-2-255 (1993)

§20-2-255. Petitionsforcharterschoolstatus

(a) It is the intent of the General Assembly that this Code section provide a means whereby local schools my choose to substitute a binding performance based contract approved by both state and local boards of education, called a charter, for state and local rules, regulations, policies, and procedures and the applicability of the other provisions of this title.

(b) For purposes of this Code section, the term:

(1) "Charter" means a performance based contract between the state board, a local board of education, and a local school, the terms of which are approved by the local board of education and by the state board for an initial three-year period. Each performance based contract will exempt a school from state and local rules, regulations, policies, and procedures and from the provisions of this title according to the terms of the contract.

(2) "Charter school" means a school that is operating under the terms of a charter granted by the state board.

(3) "Local board" means a county or independent board of education exercising control and management of a local school system pursuant to Article VIII, Section V of the Constitution.

(4) "Local school" means a public school in Georgia which is under the management and control of a local board.

(5) "Petition" means a proposal to enter into a performance based contract between the state board and a local school whereby the local school obtains charter school status.

(6) "State board" means the State Board of Education.

(c) Any local school may petition the state board for charter school status in accordance with a schedule approved by the state board. Such petitions must:

(1) Be approved by the local board of education;

(2) Be freely agreed to by over two-thirds of the faculty and instructional staff members by secret ballot at the school initiating the petition;

(3) Be agreed to by over two-thirds of the parents present at a meeting called for the purpose of deciding whether to initiate the petition;

(4) Describe a plan for school improvement that addresses how the school proposes to work toward improving student learning and meeting the national and state education goals;

(5) Outline proposed performance criteria that will be used during the initial three-year period of the charter to measure progress of the school in improving student learning and in meeting the national and state education goals;

(6) Describe how the faculty, instructional staff, and parents of students enrolled in the school will be involved in developing the petition, developing and implementing the improvement plan, and identifying performance criteria; and

(7) Describe how the concerns of faculty, instructional staff, and parents of students enrolled in the school will be solicited and addressed in evaluating the effectiveness of the improvement plan.

(d) The state board is authorized and directed to establish criteria and procedures for charter schools. Each year, the state board must review petitions for charter school status received from local schools. The state board is directed to approve such petitions and to grant charter school status to local schools whose petitions, in the opinion of the state board:

(1) Provide a plan for improvement at the school level for improving student learning and for meeting the national and state education goals;

(2) Include a set of performance based objectives and student outcome based objectives for the term of the charter and the means for measuring those objectives on at least a yearly basis;

(3) Include an agreement to provide a yearly report to parents, the community, the local board, and the state board which indicates the progress made by the charter school in the previous year in meeting the performance objectives; and

(4) Include a proposal to directly and substantially involve the parents of students enrolled in the school as well as the faculty, instructional staff, and the broader community in the process of creating the petition and in carrying out the terms of the charter.

(e) The state board may allow local schools to resubmit petitions for charter school status if the original petition was, in the opinion of the state board, deficient in one or more respects. The Department of Education is authorized and directed to provide technical assistance to the faculty and instructional staff of local schools in the creation or modification of these petitions.

(f) The state board will include in the terms of each charter:

(1) A mechanism for declaring the charter null and void if over two-thirds of the faculty and instructional staff of the school request the state board to withdraw the charter or if, at any time, in the opinion of the state board, the school enjoying charter school status fails to fulfill the terms of the charter;

(2) Clear performance based and student outcome based objectives and the means to measure those objectives on at least a yearly basis;

(3) A mechanism for updating the terms of each charter, agreed to by all parties and subject to the approval of over two-thirds of the faculty and instructional staff, based upon the yearly progress reports given the state board by the charter school;

(4) A provision that the expenditure controls contained in Code Section 20-2-167 may be relaxed only for those direct instructional expenditures actually made by each charter school for the students of that school; and

(5) A provision to exempt the school from state rules, regulations, policies, and procedures and from other provisions of this title, unless otherwise specified.

(g) Any request for petition to obtain charter school status sent by a local school to a local school board shall be forwarded by the local school board to the State Board of Education. If a local school board disapproves a local school's request for petition, the local school board must inform the faculty of the local school of the reasons for such disapproval, and a copy of the reasons must be forwarded to the state board. The state board may, at its discretion, request a hearing to receive further information from the local school board and the local school faculty.

(h) The state board is authorized to renew charters on a one-year or multiyear basis, not to exceed three years, for local schools after the initial three-year period, provided all parties to the original charter approve such renewal with a vote of over two-thirds of the faculty and instructional staff.

(i) The state board will report to the General Assembly each year on the status of the charter school program.

EFFECTIVE DATE: This Code section became effective April 19, 1993.

G.KANSAS

1994 Kan. SB 803

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SYNOPSIS: AN ACT concerning school districts; providing for the establishment of charter schools by boards of education; amending K.S.A. 72-9901 and 72-9903 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. It is the intention of this act to provide an alternative means within the public school system for ensuring accomplishment of the necessary outcomes of education by offering opportunities for school building or school district employees groups, educational services contractors, and other persons or entities to establish and maintain charter school programs that operate within a school district structure, hut independently from other school programs of the district.

New Sec. 2. The board of education of any school district may authorize the establishment of a nonsectarian, outcomes-oriented educational program, hereinafter referred to as a charter school, as a means of providing new opportunities for:

(a) Improved pupil learning;

(b) increased learning opportunities for pupils in special areas of emphasis in accord with themes established for charter schools;

(c) creative and unconventional instructional techniques and structures;

(d) new professional vistas for teachers who operate such schools or who choose to work in them; and

(e) freedom from conventional program constraints and mandates.

New Sec. 3. The total number of charter schools operating in the state in any school year shall not exceed 15. No school district may operate more than two charter schools in any school year. The state board of education shall establish a procedure for effectuating the provisions of this section by providing school districts with information concerning the number of charter schools currently being operated, the availability of an opportunity for establishment of a charter school due to discontinuance of a previously established charter school, and criteria for determining the order in which additional charter schools may be established.

New Sec. 4. (a) The state board of education shall design and prescribe the format of a petition for establishment of charter schools. The petition shall be designed in a manner that will provide for inclusion of a description of the key elements of the charter under which the school will be operated. The board of education of a school district may adopt policies and procedures for receiving, reviewing and screening petitions.

(b) A petition for the establishment of a charter school may be prepared and submitted to the board of education of a school district by or on behalf of a school building or school district employees group, an educational services contractor, or any other person or entity. Any such petition shall be submitted by not later than December 1 of the school year preceding the school year in which the charter school is proposed to be established.

(c) The board of education of a school district shall receive and review each petition for establishment or continuation of a charter school and may grant or renew a charter for operation of the school. The charter must contain the following key elements:

(1) A description of the educational program of the school, including the facilities that will be used to house the program;

(2) a description of the level of interest and support on the part of school district employees, parents, and the community;

(3) specification of program goals and the measurable pupil outcomes consonant with achieving the goals;

(4) explanation of how pupil performance in achieving the specified outcomes will be measured, evaluated, and reported;

(5) the governance structure of the school, including the means of ensuring accountability to the board of education;

(6) a description of qualifications to be met by persons employed by the district for assignment to the charter school;

(7) procedures that will be followed to ensure the health and safety of pupils and staff;

(8) criteria for admission of pupils, including a description of the lottery method to be used if too many pupils seek enrollment in the school;

(9) manner in which annual financial and program audits will be conducted;

(10) pupil suspension and expulsion policies, to the extent there is deviation from district wide policies;

(11) manner of pupil participation in the Kansas assessment program;

(12) terms and conditions of employment in the charter school;

(13) specification of the manner in which contracts of employment and status of certificated employees of the district who participate in the operation of the school will be dealt with upon nonrenewal or revocation of the charter or upon a decision by any such employees to discontinue participation in the operation of the school;

(14) identification of school district policies, state board of education rules and regulations, and statutory requirements from which waiver is sought in order to facilitate operation of the school and explanation of the reasons such waivers are being requested; and

(15) the proposed school budget.

(d) In addition to satisfying a board of education with regard to the key elements contained in the charter, a charter school must comply with the following requirements in order to qualify for establishment or continuation:

(1) The school must be focused on outcomes or results and must participate in the quality performance accreditation process unless a specific request documenting the reasons for deviation from the process is submitted to and approved by the board of education and the state board of education;

(2) pupils in attendance at the school must be reasonably reflective of the racial and socio-economic composition of the school district as a whole;

(3) pupils may not be charged tuition; and

(4) compliance with applicable health, safety, and access laws must be assured.

(e) If, upon receipt of a petition for establishment or continuation of a charter school, a board of education finds the petition to be incomplete, the board may request the necessary information from the petitioner. After receiving a satisfactory petition, the board of education shall give notice of the time, date and place for the holding of a public hearing on the petition and shall rule on the petition within 30 days after the public hearing is held. If the board of education approves the petition, the board shall notify the petitioner and the state board of education within 30 days after the approval or by February 1 of the school year preceding the school year in which the charter school is proposed to be established, whichever is earlier. After being notified by a board of education of the approval of a petition, the state board shall determine whether the charter school is in compliance with applicable state and federal laws and rules and regulations. If the charter school is found to be in compliance with such laws and rules and regulations, the state board shall approve establishment of the charter school. If the charter school is not in compliance with such laws and rules and regulations, establishment of the school shall not be approved until the state board's objections have been satisfied. If the state board receives notification of the approval of petitions by boards of education for establishment of more than 15 charter schools that are found to be in compliance with applicable state and federal laws and rules and regulations, the state board shall select and approve establishment of the 15 charter schools deemed to possess the greatest potential for successful operation. The state board shall notify boards of education and petitioners for the establishment of a charter school of the approval thereof by not later than April 1 of the school year preceding the school year in which the charter school is proposed to be established.

(f) If a charter school that has been approved for establishment has sought waiver from any school district policy, state board of education rules and regulations, or statutory requirements, the board of education of the school district in which the charter school will be established may consider the reasons for which the waivers have been requested. If the board of education determines that the reasons for seeking such waivers are meritorious and legitimately related to successful operation of the charter school, the board of education may grant waiver of school district policy and may make application, on behalf of the charter school, to the state board of education for waiver of state board rules and regulations or statutory requirements. The state board may consider the application for waiver and approve, deny, or amend and approve the application. Upon approval or amendment and approval of the application, the charter school may operate under the terms and conditions of the waiver. The manner and method of exercising the rights and performing the responsibilities, duties and functions provided for under any school district policy, state board rules and regulations, or statutory requirements that are waived under authority of this subsection shall be prescribed in the charter and governed thereby.

New Sec. 5. (a) Whenever a charter school has been approved for establishment or continuation by the board of education of a school district and the state board of education, no other approval shall be required for a period of three school years. The board of education may consider renewal of the operational status of the charter school at the conclusion of such three-year period and may either renew the charter and continue operation of the school, subject to approval by the state board of education, or nonrenew the charter and discontinue operation of the school. The board of education shall revoke the charter of a school if the school:

(1) Materially violates provisions contained in the charter;

(2) fails to meet or pursue the educational objectives contained in the charter;

(3) fails to comply with fiscal accountability procedures as specified in the charter; or

(4) violates provisions of law that have not been waived by the state board of education.

(b) Prior to nonrenewing or revoking a charter, a board of education shall hold a hearing on the issues in controversy. Spokespersons for the charter school shall be provided the opportunity to present information refuting the basis upon which the nonrenewal or revocation is premised. At least

30 days notice must be provided to representatives of the charter school prior to the hearing. Within 60 days after the hearing, the board of education shall announce its decision on the nonrenewal or revocation issue. The board may abandon the proposed nonrenewal or revocation, nonrenew or revoke the charter, or continue recognition of the charter contingent upon compliance with specified conditions. The decision of a board of education to nonrenew or revoke a charter is not subject to appeal; however, the charter school authorities may renew procedures for authority to operate a charter school.

New Sec. 6. The board of education of any school district in which a charter school is being operated shall provide transportation to and from the school for pupils who qualify for free meals under the national school lunch act and who live 2 1/2 or more miles from the school. Nothing in this section shall operate in any manner to prevent a board of education from providing transportation to and from a charter school for all pupils attending the school.

New Sec. 7. (a) All employees who are participating in the operation of a charter school and who qualify for membership in the Kansas public employees retirement system shall be members of the system.

(b) All employees of a school district who are participating in the operation of a charter school and who qualify for health insurance and other fringe benefit programs provided for other school district employees shall be eligible to participate in such programs.

New Sec. 8. (a) The state board of education shall provide, upon request, any school building or school district employees group, any educational services contractor, and any other person or entity with technical advice and assistance regarding the establishment and operation of a charter school or the preparation of a petition requesting authorization of a board of education for the establishment and operation of such a school.

(b) At the conclusion of each school year in which a charter school is operated in a school district, the board of education of the school district shall evaluate the impact the charter school has had on the educational system of the district and shall submit the evaluation to the state board of education. The state board shall review, assess and compile the evaluations of charter schools submitted by boards of education and shall submit the compilation of evaluations and other relevant material, including specification of school district and state board waivers granted with respect to the operation of each charter school, to the governor and the legislature.

Sec. 9. K.S.A. 72-9901 is hereby amended to read as follows:

72-9901. As used in this act:

(d) "Educational system enhancement plan" or "enhancement plan" means a plan which is developed and maintained by the board of a school district for the purpose of improving the educational system of the school district. The plan may encompass, but not by way of limitation, such measures as identification of goals and needs, formulation of priorities and objectives, evaluation and enrichment of curriculum and instructional program, examination and refinement of delivery methods, engagement in research and planning activities, exploration and implementation of innovative and experimental procedures and activities, development of more effective instructional materials and techniques, enhancement of staff development and inservice education programs, exploration of ways and means of forming school-business partnerships and formation of such

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partnerships, formulation and introduction of before or after school sessions or both before and after school sessions for the purpose of affording pupils an opportunity to strengthen basic skills or participate in curriculum enrichment activities, development and installation of action plans for general improvement of pupil attitudes and achievement and establishment or enhancement and operation of charter schools.

Sec. 10. K.S.A. 72-9903 is hereby amended to read as follows:
72-9903.

(a) The state board shall adopt rules and regulations for the administration of this act and shall:

(1) Establish standards and criteria for reviewing, evaluating and approving educational system enhancement plans, at risk pupil assistance plans, and applications of school districts for grants;

(2) prescribe and adopt criteria for identification of at risk pupils;

(3) establish standards and criteria for measures which may be encompassed by enhancement plans and assistance plans;

(4) approve educational system enhancement plans and at risk pupil assistance plans for the award of grants of state moneys;

(5) establish funding priorities for determining the amount of grants of state moneys to school districts which are maintaining approved enhancement plans or assistance plans or both such plans;

(6) be responsible for awarding, on the basis of evaluation of plans and according to established funding priorities, grants of state moneys to school districts; and

(7) request of and receive from each school district which is participating in the educational excellence grant program reports containing information with regard to the overall effectiveness of the plan or plans in improving the educational system of the school district.

(b) In evaluating enhancement plans and establishing funding priorities for the award of grants of state moneys to school districts, the state board shall consider:

(1) Comprehensiveness of the plan;

(2) level of effort exhibited by the school district in the development and maintenance of the plan;

(3) integrality of the plan to the educational system of the school district;

(4) aggressiveness of the school district in the exploration of ways and means of forming school-business partnerships and success in the formation of such partnerships;

(5) endeavors of the school district to enter into cooperative or interlocal cooperation agreements with other school districts for the joint development and maintenance of a plan in order to effect cost savings and efficiency in achieving the purposes of the plan; and

(6) potential of the plan for contributing to successful effectuation of the purpose of the program.

(c) In evaluating assistance plans and establishing funding priorities for the award of grants of state moneys to school districts, the state board shall consider:

(1) The dropout rate of the school district;

(2) the number and percentage of pupils of the school district who have been identified as at risk pupils;

(3) level of effort exhibited by the school district in providing assistance to at risk pupils in past years;

(4) the evaluation procedure designed to measure the effectiveness of the school district assistance plan;

(5) the potential effectiveness of the plan in meeting the specific needs of at risk pupils; and

(6) endeavors of the school district to enter into cooperative or interlocal cooperation agreements with other school districts for the joint development and maintenance of a plan in order to effect cost savings and efficiency in achieving the purposes of the plan.

(D) in performing its duties under subsection (b), the state board shall give preferential consideration to plans encompassing the establishment or enhancement and operation of charter schools that principally target at risk pupils.

Sec. 11. K.S.A. 72-9901 and 72-9903 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

H.MASSACHUSETTS

Mass. Ann. Laws ch. 71, §89 (Law. Coop. 1993)

§ 89. Charter schools.

A charter school shall be a public school, operated under a charter granted by the secretary of education, which operates independently of any school committee and is managed by a board of trustees. The board of trustees of a charter school, upon receiving a charter from the secretary of education, shall be deemed to be public agents authorized by the commonwealth to supervise and control the charter school.

The purposes for establishing charter schools are: (1) to stimulate the development of innovative programs within public education; (2) to provide opportunities for innovative learning and assessments; (3) to provide parents and students with greater options in choosing schools within and outside their school districts; (4) to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management; (5) to encourage performance-based educational programs and; (6) to hold teachers and school administrators accountable for students' educational outcomes.

Persons or entities eligible to submit an application to establish a charter school shall include, but not be limited to, a business or corporate entity, two or more certified teachers or two or more parents. Said application may be filed in conjunction with a college, university, museum or other similar entity. Private and parochial schools shall not be eligible for charter school status.

The secretary of education shall establish the information needed in an application for the approval of a charter school; provided, however, that said application shall include the method for admission to a charter school. There shall be no application fee for admission to a charter school.

Applications to establish a charter school shall be submitted each year by February fifteenth. The secretary of education shall review the applications no later than March fifteenth.

The secretary of education shall make the final determination on granting charter school status and may condition charters on the charter school's taking certain actions or maintaining certain conditions. No more than twenty-five charter schools shall be allowed to operate in the commonwealth at any time. Of these, no more than five shall be located in the city of Boston; no more than five shall be located in the city of Springfield; and no more than two shall be located in any other city or town. Under no circumstances shall the total number of students attending charter schools in the commonwealth he allowed to be greater than three-quarters of one percent of the total number of students attending public schools in the commonwealth.

A charter school established under a charter granted by the secretary shall be a body politic and corporate with all powers necessary or desirable for carrying out its charter program, including, but not limited to, the following:

(a) to adopt a name and corporate seal; provided, however, that any name selected must include the words "charter school"

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(b) to sue and be sued, but only to the same extent and upon the same conditions that a town can be sued;

(c) to acquire real property, from public or private sources, by lease, lease with an option to purchase, or by gift, for use as a school facility;

(d) to receive and disburse funds for school purposes;

(e) to make contracts and leases for the procurement of services, equipment and supplies; provided, however, that if the board intends to procure substantially all educational services under contract with another person, the terms of such a contract must be approved by the secretary, either as part of the original charter or by way of an amendment thereto; provided, further, that the secretary shall not approve any such contract terms, the purpose or effect of which is to avoid the prohibition of this section against charter school status for private and parochial schools;

(f) to incur temporary debt in anticipation of receipt of funds;

(g) to solicit and accept any grants or gifts for school purposes;

(h) to have such other powers available to a business corporation formed under chapter one hundred and fifty-six B that are not inconsistent with this chapter.

Charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language, and academic achievement. Charter schools may limit enrollment to specific grade levels or areas of focus of the school, such as mathematics, science or the arts.

A charter school may establish reasonable academic standards as a condition for eligibility for applicants. Preference for enrollment in a charter school shall be given to students who reside in the city or town in which the charter school is located. If the total number of students who are eligible to attend and apply to a charter school and who reside in the city or town in which the charter school is located, or are siblings of students already attending said charter school is greater than the number of spaces available, then an admissions lottery shall be held to fill all of the spaces in that school from among said students. If there are more spaces available than eligible applicants from the city or town in which said charter school is located and who are siblings of current students, and more eligible applicants than spaces left available, then a lottery shall be held to determine which of said applicants shall be admitted. There shall be no tuition charge for students attending charter schools.

A student may withdraw from a charter school at any time and enroll in a public school where said student resides. A student may be expelled from charter school based on criteria determined by the board of trustees, and approved by the secretary of education, with the advice of the principal and teachers.

A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building, or any other suitable location. A charter school may own, lease or rent its space.

A charter school shall operate in accordance with its charter and the provisions of law regulating other public schools; provided, however, that the provisions of sections forty-one and forty-two shall not apply to employees of charter schools. Charter schools shall comply with the provisions of chapters seventy-one A and seventy-one B; provided, however, that the fiscal responsibility of any special needs student currently enrolled in or determined to require a private day or residential school shall remain with the school district where the student resides.

Students in charter schools shall be required to meet the same performance standards, testing and portfolio requirements set by the board of education for students in other public schools.

The board of trustees, in consultation with the teachers, shall determine the school's curriculum and develop the school's annual budget.

Employees of charter schools shall be considered public employees for purposes of tort liability under chapter two hundred end fifty-eight and for collective bargaining purposes under chapter one hundred and fifty E. The board of trustees shall be considered the public employer for purposes of tort liability under said chapter two hundred and fifty-eight and for collective bargaining purposes under said chapter one hundred and fifty E. Teachers employed by a charter school shall be subject to the state teacher retirement system under chapter thirty-two and service in a charter school shall be "creditable service" within the meaning thereof.

Each local school district shall be required to grant a leave of absence to any teacher in the public schools system requesting such leave in order to teach in charter schools. A teacher may request a leave of absence for up to two years.

At the end of the two year period, the teacher may make a request to the superintendent that such leave be extended for an additional two years, and approval for said request shall not be unreasonably withheld or he may return to his former teaching position. At the end of the fourth year, the teacher may either return to his former teaching position or, if he chooses to continue teaching at the charter school, resign from his school district position.

Notwithstanding section fifty-nine C, the internal form of governance of a charter school shall be determined by the school's charter.

A charter school shall comply with all applicable state and federal health and safety laws and regulations.

The children who reside in the school district in which the charter school is located shall be provided transportation to the charter school by the resident district's school committee on the same terms and conditions as transportation is provided to children attending local district schools. Students who do not reside in the district in which the charter school is located shall be eligible for transportation in accordance with section twelve B of chapter seventy-six.

Each charter school shall submit to the secretary, to each parent or guardian of its enrolled students, and to each parent or guardian contemplating enrollment in that charter school an annual report. The annual report shall be issued no later than August first of each year for the preceding school year. The annual report shall be in such form as may be prescribed by the secretary of education and shall include at least the following components:

(a) discussion of progress made toward the achievement of the goals set forth in the charter;

(b) a financial statement setting forth by appropriate categories, the revenue and expenditures for the year just ended.

Individuals or groups may complain to a charter school's board of trustees concerning any claimed violation of the provisions of this section by the school. If, after presenting their complaint to the trustees, the individuals or groups believe their complaint has not been adequately addressed, they may submit their complaint to the secretary of education who shall investigate such complaint and make a formal response.

A charter granted by the secretary of education shall be for five years. The secretary of education may revoke a school's charter if the school has not fulfilled any conditions imposed by the secretary of education in connection with the grant of the charter or the school has violated any provision of its charter. The secretary may place the charter school on probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked.

The secretary shall develop procedures and guidelines for revocation and renewal of a school's charter.

Notwithstanding the foregoing, no school building assistance funds, so-called, shall be awarded to a charter school for the purpose of constructing, reconstructing or improving said school.

Charter schools shall be funded as follows: If a student attending a charter school resides in a community with a positive foundation gap, the district of the city or town in which said student resides shall pay to the charter school an amount equal to the average cost per student in said district. If a student attending a charter school resides in a community that does not have a positive foundation gap pursuant to chapter seventy, the district of the city or town in which said student resides shall pay to the charter school an amount equal to the lesser of: (1) the average cost per student in said district; and (2) the average cost per student in the district in which the charter school is located.

I.MICHIGAN

1993 Mich. Pub. Acts 362

Section 1. Act No. 451 of the Public Acts of 1976, as amended, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, is amended by adding part 6a to read as follows:

Sec. 501. (1) A public school academy is a public school under section 2 of article VIII of the state constitution of 1962, and is considered to be a school district for the purposes of section 11 of article IX of the state constitution of 1963. A public school academy is a body corporate and is a governmental agency. The powers granted to a public school academy under this part constitute the performance of essential public purposes and governmental functions of this state. A public school academy may sue and be sued in its name, may acquire and take real and personal property for educational purposes by purchase, gift, grant, devise, or bequest, and may sell and convey the property as the interests of the public school academy require.

(2) As used in this part:

(a) "Authorizing body" means any of the following that grants a contract as provided in this part:

(i) The board of a school district.

(ii) An intermediate school board.

(iii) The board of a community college.

(iv) The governing board of a state public university.

(b) "Certificated teacher" means an individual who holds a valid teaching certificate issued by the state board under section 1531.

(c) "Community college" means a community college organized under the community college act of 1966, Act No. 331 of the Public Acts of 1966, being sections 389.1 to 389.195 of the Michigan Compiled Laws, or a federal tribally controlled community college that is recognized under the tribally controlled community college assistance act of 1978, Public Law 95-471,92 Stat. 1325, and is determined by the department to meet the requirements for accreditation by a recognized regional accrediting body.

(d) "Contract" means the written instrument executed by an authorizing body conferring certain rights, franchises, privileges, and obligations of a public school academy, as provided by this part, and confirming the status of a public school academy as a public school in this state.

(e) "State public university" means a university described in section 4,5, or 6 of article VIII of the state constitution of 1962.

Sec. 502. (1) A public school academy shall be organized and administered under the direction of a board of directors in accordance with this part and with bylaws adopted by the board of directors. A public school academy shall be organized under the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 459.2101 to 450.3192 of the Michigan Compiled Laws, except that a public school academy corporation is not required to comply with sections 170 to 177 of Act No. 327 of the Public Acts of 1931, being sections 450.170 to 450.177 of the Michigan Compiled Laws. To the extent disqualified under the state or federal constitution, a public school academy shall not be organized by a church or other religious organization and shall not have any organizational or contractual affiliation with or constitute a church or other religious organization.

(2) Any of the following may act as an authorizing body to grant a contract to organize and operate 1 or more public school academies under this part:

(a) The board of a school district. However, the board of a school district shall not issue a contract for a public school academy to operate outside the school district's boundaries, and a public school academy authorized by the board of a school district shall not operate outside that school district's boundaries.

(b) An intermediate school board. However, the board of an intermediate school district shall not issue a contract for a public school academy to operate outside the intermediate school district's boundaries, and a public school academy authorized by the board of an intermediate school district shall not operate outside that intermediate school district's boundaries.

(c) The board of a community college. However, the board of a community college shall not grant a contract for more than 1 public school academy; the board of a community college shall not grant a contract for a public school academy to operate in a school district organized as a school district of the first class, and a public school academy authorized by the board of a community college shall not operate in a school district organized as a school district of the first class; and the board of a community college shall not issue a contract for a public school academy to operate outside the boundaries of the community college district, and a public school academy authorized by the board of a community college shall not operate outside the boundaries of the community college district.

(d) The governing board of a state public university.

(3) To obtain a contract to organize and operate 1 or more public school academies, — applicant shall apply to an authorizing body described in subsection (2). The application shall include at least all of the following:

(a) Identification of the applicant for the contract.

(b) Subject to the resolution adopted by the authorizing body under section 1(3), a list of the proposed members of the board of directors of the public school academy or a description of the qualifications and method for appointment or election of members of the board of directors.

(c) The proposed articles of incorporation, which shall include at least all of the following:

(i) The name of the proposed public school academy.

(ii) The purposes for the public school academy corporation. This language shall provide that the public school academy is incorporated pursuant to this part and that the public school academy corporation is a governmental entity.

(iii) The name of the authorizing body.

(iv) The proposed time when the articles of incorporation will be effective.

(v) Other matters considered expedient to be in the articles of incorporation.

(d) A copy of the proposed bylaws of the public school academy, which shall include at least all of the following,

(i) The governance structure of the public school academy.

(ii) A copy of the educational goals of the public school academy and the curriculum to be offered and methods of pupil assessment to be used by the public school academy. To the extent applicable, the progress of the pupils in the public school academy shall be assessed using at least a Michigan education assessment program (MEAP) test or an assessment instrument developed under section 104a of the state school aid act of 1979, being section 388.1704a of the Michigan Compiled Laws, for a state-endorsed high school diploma, or 1 or more of the following nationally normed tests: the California achievement test, the Stanford achievement test, or the Iowa test of basic skills.

(iii) The admission policy and criteria to be maintained by the public school academy. The admission policy and criteria shall comply with section 504.

(iv) The school calendar and school day schedule.

(v) The age or grade range of pupils to be enrolled.

(e) Descriptions of staff responsibilities and of the public school academy's governance structure.

(f) For an application to the board of a school district, an intermediate school board, or board of a community college, identification of the local and intermediate school districts in which the public school academy will be located.

(g) An agreement that the public school academy will comply with the provisions of this part and, subject to the provisions of this part, with all other state law applicable to public bodies and with federal law applicable to public bodies or school districts.

(h) For a public school academy authorized by a school district, an assurance that employees of the public school academy will be covered by the collective bargaining agreements that apply to other employees of the school district employed in similar classifications in schools that are not public school academies.

(i) A description of and address for the physical plant in which the public school academy will be located.

Sec. 503. (1) An authorizing body is not required to issue a contract to any person or entity. Public school academy contracts shall be issued on a competitive basis taking into consideration the resources available for the proposed public school academy, the population to be served by the proposed public school academy, and the educational goals to be achieved by the proposed public school academy.

(2) If a person or entity applies to the board of a school district for a contract to organize and operate 1 or more public school academies within the boundaries of the school district and the board does not grant the contract, the person or entity may petition the board to place the question of granting the contract on the ballot to be decided by the school electors of the school district. The petition shall contain all of the information required to be in the contract application under section 592(3) and shall be signed by a number of school electors of the school district equal to at least 15% of the total number of school electors of that school district. The petition shall be filed with the secretary of the board. If the board receives a petition meeting the requirements of this subsection, the board shall place the question of granting the contract on the ballot at its next annual school election held at least 60 days alter receiving the petition. If a majority of the school electors of the school district voting on the question vote to grant the contract, the board shall grant the contract.

(3) An authorizing body shall adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of each public school academy subject to its jurisdiction.

(4) A contract granted to a person or entity to organize and administer a public school academy shall contain at least all of the following:

(a) The educational goals the public school academy is to achieve and the methods by which it will be held accountable. The pupil outcomes of a public school academy shall be assessed using a Michigan education assessment program (MEAP) test or an assessment instrument developed under section 104a of the state school aid act of the state school aid act of 1979, being section 388.1704a of the Michigan Compiled Laws, for a state endorsed high school diploma, or 1 or more of the following nationally normed tests: the California achievement test, the Stanford achievement test, or the Iowa test of basic skills.

(b) A description of the method to be used to monitor the public school academy's compliance with applicable law and its performance in meeting its targeted educational outcomes.

(c) A description of the process for amending the contract during the term of the contract.

(d) Specific operating requirements for the public school academy, which shall include at least all of the matters set forth in the application for the contract.

(e) For a public school academy authorized by a school district, an agreement that employees of the public school academy will be covered by the collective bargaining agreements that apply to employees of the school district employed in similar classifications in schools that are not public school academies.

(f) Procedures for revoking the contract and grounds for revoking the contract, including at least the grounds listed in section 507.

(g) A description of and address for the physical plant in which the public school academy will be located.

(5) A public school academy shall comply with all applicable law including, but not limited to:

(a) That it is a public body as provided in the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(b) The freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(c) Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

(d) Act No. 166 of the Public Acts of 1965, being sections 408.551 to 408.558 of the Michigan Compiled Laws.

(e) Sections 1267 and 1274.

(6) A public school academy and its incorporators, board member, officers, employees, and volunteers have governmental immunity as provided in section 7 of Act No. 170 of the Public Acts of 1964, being section 691.1407 of the Michigan Compiled Laws.

(7) A public school academy is exempt from all taxation on its earnings and property. Instruments of conveyance to or from a public school academy are exempt from all taxation including taxes imposed by Act No. 134 of the Public Acts of 1966, being sections 207.501 to 207.513 of the Michigan Compiled Laws.

(8) A public school academy may acquire by purchase, gift, devise, lease, sublease, installment purchase agreement, land contract, option, or by any other means, hold; and own in its own name buildings and other property for school purposes, and interests therein, and other real and personal property, including, but not limited to, interests in property subject to mortgages, security interests, or other liens, necessary or convenient to fulfill its purposes. For the purposes of condemnation, a public school academy may proceed under the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws, excluding sections 6 to 9 of that act, being sections 213.56 to 213.59 of the Michigan Compiled Laws, or other applicable statutes, but only with the express, written permission of the authorizing body in each instance of condemnation and only after just compensation has been determined and paid.

Sec. 504. (1) A public school academy shall not operate at a site other than the single site requested for the configuration of grades that will use the site, as specified in the application required under section 502 and in the contract.

(2) A public school academy shall not charge tuition and shall not discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district. However, a public school academy may limit admission to pupils who are within a particular range of age or grade level or on any other basis that would be legal if used by a school district.

(3) Except for a foreign exchange student who is not a United States citizen, a public school academy shall not enroll a pupil who is not a resident of this state. Enrollment in the public school academy shall be open to all pupils who reside within the geographic boundaries, if any, of the authorizing body as described in section 502(2)(a) to (c) who meet the admission policy. For a public school academy authorized by a state public university, enrollment shall be open to all pupils who reside in this state who meet the admission policy. If there are more applications to enroll in the public school academy than there are spaces available, pupils shall be selected to attend using a random selection process. However, a public school academy may give enrollment priority to a sibling of a pupil enrolled in the public school academy. A public school academy shall allow any pupil who was enrolled in the public school academy in the immediately preceding school year to enroll in the public school academy in the appropriate grade unless the appropriate grade is not offered at that public school academy.

(4) A public school academy may include any grade up to grade 12 or any configuration of those grades, including kindergarten and early childhood education, as specified in its contract. If specified in its contract, a public school academy may also operate an adult basic education program, adult high school completion program, or general education development testing preparation program. The authorizing body may approve amendment of a contract with respect to ages of pupils or grades offered.

Sec. 505. (1) A public school academy operated by a state public university or community college may use noncertificated individuals to teach as follows:

(a) If the public school academy is operated by a state public university, the public school academy may use as a classroom teacher in any grade a faculty member who is employed full-time by the state public university and who has been granted institutional tenure, or has been designated as being on tenure track by the state public university.

(b) For a public school academy operated by a community college, the public school academy may use as a classroom teacher a full-time member of the community college faculty who has at least 5 years' experience at that community college in teaching the subject matter that he or she is teaching at the public school academy.

(c) In any other situation in which a school district is permitted under this act to use noncertificated teachers.

(2) If a public school academy develops new teaching techniques or methods or significant revisions to known teaching techniques or methods, the public school academy shall report those to the authorizing body to be made available to the public.

Sec. 506. A public school academy, with the approval of the authorizing body, may employ or contract with personnel as necessary for the operation of the public school academy, prescribe their duties, and fix their compensation.

Sec. 507. The authorizing body for a public school academy is the fiscal agent for the public school academy. A state school aid payment for a public school academy shall be paid to the authorizing body that is the fiscal agent for that public school academy, which shall then forward the payment to the public school academy. An authorizing body has the responsibility to oversee a public school academy's compliance with the contract and all applicable law. A contract issued under this part may be revoked by the authorizing body that issued the contract if the authorizing body determines that 1 or more of the following has occurred:

(a) Failure of the public school academy to abide by and meet the educational goals set forth in the contract.

(b) Failure of the public school academy to comply with all applicable law.

(c) Failure of the public school academy to meet generally accepted public sector accounting principles.

(d) The existence of 1 or more other grounds for revocation as specified in the contract.

Section 2. Part 6a of Act No. 451 of the Public Acts of 1976, as added by Enrolled House Bill No. 5124 of 1993, is repealed.

This act is ordered to take immediate effect.

J.MINNESOTA

Minn. Stat. §3[120.064], §43[124.248]

SEC.3[120.064]Outcome-BasedSchools

Subdivision 1. Purposes. (a) The purpose of this section is to:

(1) improve pupil learning;

(2) increase learning opportunities for pupils;

(3) encourage the use of different and innovative teaching methods;

(4) require the measurement of learning outcomes and create different and innovative forms of measuring outcomes;

(5) establish new forms of accountability for schools; or

(6) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

(b) This section does not provide a means to keep open a school that otherwise would be closed. Applicants in these circumstances bear the burden of proving that conversion to an outcome-based school fulfills a purpose specified in this subdivision, independent of the school's closing.

Subd. 2. Applicability. This section applies only to outcome-based schools formed and operated under this section.

Subd. 3. Sponsor. (a) A school board may sponsor one or more outcome-based schools.

(b) A school board may authorize a maximum of five outcome-based schools. No more than a total of twenty outcome-based schools may be authorized. The state board of education shall advise potential sponsors when the maximum number of outcome-based schools has been authorized.

Subd. 4. Formation of School. (a) A sponsor may authorize one or more licensed teachers under section 215.182, subdivision 2, to form and operate an outcome-based school subject to approval by the state board of education. If a school board elects not to sponsor an outcome-based school, the applicant may appeal the school board's decision to the state board of education if two members of the school board voted to sponsor the school. If the state board authorizes the school, the state board shall sponsor the school according to this section. The school shall be organized and operated as a cooperative under chapter 308A or nonprofit corporation under chapter 317A.

(b) Before the operators may form and operate a school, the sponsor must file an affidavit with the state board of education stating its intent to authorize an outcome-based school. The affidavit must state the terms and conditions under which the sponsor would authorize an outcome-based school. The state board must approve or disapprove the sponsor's proposed authorization within 30 days of receipt of the affidavit. Failure to obtain state board approval precludes a sponsor from authorizing the outcome-based school that was the subject of the affidavit.

(c) The operators authorized to organize and operate a school shall hold an election for members of the school's board of directors in a timely manner after the school is operating. Any staff members who are employed at the school, including teachers providing instruction under a contract with a cooperative, and all parents of children enrolled in the school may participate in the election. Licensed teachers employed at the school, including teachers providing instruction under a contract with a cooperative, must be a majority of the members of the board of directors.

Subd. 4a. Conversion of Existing Schools. A school board may convert one or more of its existing schools to outcome-based schools under this section if 90 percent of the full-time teachers at the school sign a petition seeking conversion. The conversion must occur at the beginning of an academic year.

Subd. 5. Contract. The sponsor's authorization for an outcome-based school shall be in the form of a written contract signed by the sponsor and the board of directors of the outcome-based school. The contract for an outcome-based school shall be in writing and contain at least the following:

(1) a description of a program that carries out one or more of the purposes in subdivision 1;
(2) specific outcomes pupils are to achieve under subdivision 10;
(3) admission policies and procedures;
(4) management and administration of the school;
(5) requirements and procedures for program and financial audits;
(6) how the school will comply with subdivisions 8, 13, 15, and 21;
(7) assumption of liability by the outcome-based school;
(8) types and amounts of insurance coverage to be obtained by the outcome-based school; and
(9) the term of the contract which maybe up to three years.

Subd. 6. Advisory Committee. (a) The state board of education shall appoint an advisory committee comprised of ten members. At least two members shall be African American, two members shall be American Indian, two members shall be Asian Pacific American, and two members shall be Hispanic. One of each of the two members shall reside within the seven county metropolitan area and one shall reside within Minnesota but outside of the seven county metropolitan area. In addition, at least one of each of the two members shall be a parent of a child in any of the grades kindergarten through 12. At least five of the ten members shall have family incomes that would make them eligible for free or reduced school lunches.

(b) Each sponsor listed in subdivision 3 shall request the advisory committee to review and make recommendations about a proposal it receives from an individual or organization that is predominately Caucasian to establish an outcome-based school in which one-half or more of the pupils are expected to be non-Caucasian.

(c) Each sponsor listed in subdivision 3 may request the advisory committee to review and make recommendations about a proposal it receives from an individual or organization that is predominately non-Caucasian if requested to do so by the individual or organization.

Subd. 7. Exemption from Statues and Rules. Except as provided in this section, an outcome-based school is exempt from all statutes and rules applicable to a school board or school district, although it may elect to comply with one or more provisions of statutes or rules.

Subd. 8. Requirements. (a) An outcome-based school shall meet all applicable state and local health and safety requirements.

(b) The school must be located in the sponsoring district, unless another school board agrees to locate an outcome-based school sponsored by another district in its boundaries. If a school board denies a request to locate within its boundaries an outcome-based school sponsored by another district, the sponsoring district may appeal to the state board of education. If the state board authorizes the school, the state board shall sponsor the school.

(c) The school must be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize an outcome-based school or program that is affiliated with a nonpublic sectarian school or a religious institution.

(d) The primary focus of the school must be to provide a comprehensive program of instruction for at least one grade or age group from five through 18 years of age. Instruction may be provided to people younger than five years and older than 18 years of age.

(e) The school may not charge tuition.

(f) The school is subject to and shall comply with chapter 363 and section 126.21.

(g) The school is subject to and shall comply with the pupil fair dismissal act, sections 127.26 to 127.39, and the Minnesota public school fee law, sections 120.71 to 120.76.

(h) The school is subject to the same financial audits, audit procedures, and audit requirements as a school district. The audit must be consistent with the requirements of sections 121.901 to 121.917, except to the extent deviations are necessary because of the program at the school, the department of education, state auditor, or legislative auditor may conduct financial, program, or compliance audits.

(i) The school is a school district for the purposes of tort liability under chapter 466.

Subd. 9. Admission Requirements. The school may limit admission to:

(1) pupils within an age group or grade level;

(2) people who are eligible to participate in the high school graduation incentives program under section 126.22;

(3) residents of a specific geographic area where the percentage of the population of non-Caucasian people of that area is greater than the percentage of the non-Caucasian population in the congressional district in which the geographic area is located, and as long as the school reflects the racial and ethnic diversity of the specific area.

The school shall enroll an eligible pupil who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, pupils shall be accepted by lot.

The school may not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability.

Subd. 10. Pupil Performance. An outcome-based school must design its programs to at least meet the outcomes adopted by the state board of education. In the absence of state board requirements, the school must meet the outcomes contained in the contract with the sponsor. The achievement levels of the outcomes contained in the contract may exceed the achievement levels of any outcomes adopted by the state board.

Subd. 11. Employment And Other Operating Matters. The school shall employ or contract with necessary teachers, as defined by section 125.03, subdivision 1, who hold valid licenses to perform the particular service for which they are employed in the school. The school may employ necessary employees who are not required to hold teaching licenses to perform duties other than teaching and may contract for other services. The school may discharge teachers and nonlicensed employees.

The board of directors also shall decide matters related to the operation of the school, including budgeting, curriculum and operating procedures.

Subd. 12 Handicapped Pupils. The school must comply with sections 120.03 and 120.17 and rules relating to the education of handicapped pupils as though it were a school district.

Subd. 13. Length Of School Year. An outcome-based school shall provide instruction each year for at least the number of days required by section 120.101, subdivision 5. It may provide instruction throughout the year according to sections 120.59 to 120.67 or 121.585.

Subd. 14. Reports. An outcome-based school must report at least annually to its sponsor and the state board of education the information required by the sponsor or the state board. The reports are public data under chapter 13.

Subd. 15 Transportation. Transportation for pupils enrolled at a school shall be provided by the district in which the school is located, according to sections 120.062, subdivision 9, and 123.39, subdivision 6, for a pupil residing in the same district in which the outcome-based school is located. Transportation may be provided by the district in which the school is located, according to sections 120.062, subdivision 9, and 123.39, subdivision 6, for a pupil residing in a different district.

Subd. 16. Leased Space. The school may lease space from a board eligible to be a sponsor or other public or private nonprofit nonsectarian organization. If a school is unable to lease appropriate space from an eligible board or other public or private nonprofit nonsectarian organization, the school may lease space from another nonsectarian organization of the department of education, in consultation with the department of administration, approves the lease.

Subd. 17. Initial Costs. A sponsor may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. A sponsor may not authorize a school before the state board of education has approved the authorization.

Subd. 18. Disseminate Information. The sponsor, the operators, and the department of education must disseminate information to the public on how to form and operate an outcome-based school and how to utilize the offerings of an outcome-based school. Particular groups to be targeted include low-income families and communities, and students of color.

Subd. 19. Leave To Teach In A School. If a teacher employed by a school district makes a written request for an extended leave of absence to teach at an outcome-based school, the school district must grant the leave. The school district must grant a leave for any number of years requested by the teacher, and must extend the leave at the teacher's request. The school district may require that the guest for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. Except as otherwise provided in this subdivision and except for section 125.60, subdivision 6a, the lava is governed by section 125.60, including, but not limited to, reinstatement, notice of intention to return, seniority, salary, and insurance.

During a leave, the teacher may continue to aggregate benefits and credits in the teachers' retirement association account by paying both the employer and employee contributions based upon the annual salary of the teacher for the last full pay period before the leave began. The retirement association may impose reasonable requirements to efficiently administer this subdivision.

Subd. 20. Collective Bargaining. Employees of the board of directors of the school may, if otherwise eligible, organize under chapter 179A and comply with its provisions. The board of directors of the school is a public employer, for the purposes of chapter 179A, upon formation of one or more bargaining units at the school. Bargaining units at the school are separate from any other units.

Subd. 21. Causes for Nonrenewal Or Termination. (a) The duration of the contract with a sponsor shall be for the term contained in the contract according to subdivision 5. The sponsor may or may not renew a contract at the end of the term for any ground listed in paragraph (b). A sponsor may unilaterally terminate a contract during the term of the contract for any ground listed in paragraph (b). At lease 60 days before not renewing or terminating a contract, the sponsor shall notify the board of directors of the school of the proposed action in writing. The notice shall state the grounds for the proposed action in reasonable detail and that the school's board of directors may request in writing an informal hearing before the sponsor within 14 days of receiving notice of nonrenewal or termination of the contract. Failure by the board of directors to make a written request for a hearing within the 14 day period shall be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the school's board of directors of the hearing date. The sponsor shall conduct an informal hearing before taking final action. The sponsor shall take final action to renew or not renew a contract by the last day of classes in the school year. If the sponsor is a local school board, the school's board of directors may appeal the sponsor's decision to the state board of education.

(b) A contract may be terminated or not renewed upon any of the following grounds:

(1) failure to meet the requirements for pupil performance contained in the contract;
(2) failure to meet generally accepted standards of fiscal management;
(3) for violations of law; or
(4) other good cause shown.

If a contract is terminated or not renewed, the school shall be dissolved according to the applicable provisions of chapter 308A or 317A.

Subd. 22. Pupil Enrollment. If a contract is not renewed or is terminated according to subdivision 21, a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit: application to a nonresident district according to section 120.062 at any time. Applications and notices required by section 120.062 shall be processed and provided in a prompt manner. The application and notice deadlines in section 120.062 do not apply under these circumstances.

Subd. 23. General Authority. The board of directors of an outcome-based school may sue and be sued. The board may not levy taxes or issue bonds.

Subd. 24. Immunity. The state board of education, members of the state board, a sponsor, members of the board of a sponsor in their official capacity, and employees of a sponsor are immune from civil or criminal liability with respect to all activities related to an outcome-based school they approve or sponsor. The board of directors shall obtain at least the amount of and types of insurance required by the contract, according to subdivision 5.

Sec. 43 [124.248] Revenue for an Outcome-Based School

Subdivision 1. General Education Revenue. General education revenue shall be paid to: outcome-based school as though it were a school district. The general education revenue for each pupil unit is the state average general education revenue per pupil unit, calculated without compensatory revenue, plus compensatory revenue as though the school were a school district.

Subd. 2. Capital Expenditure Equipment Revenue. Capital expenditure equipment aid shall be paid to an outcome-based school according to section 124.245, subdivision 6, as though it were a school district. Capital expenditure equipment aid shall equal capital expenditure equipment revenue. Notwithstanding section 124.244, subdivision 4, an outcome-based school may use the revenue for any purpose related to the school.

Subd. 3. Special Education Aid. Special education aid shall be paid to an outcome-based school according to section 124.32 as though it were a school district. The school may charge tuition to the district of residence as provided in section 120.17, subdivision 4. The district of residence shall levy: provided in section 124.321 Subd. 2 as though it were participating in a cooperative.

Subd. 4. Other Aid, Grants, Revenue. (a) An outcome-based school is eligible to receive other aids, grants, and revenue according to chapters 120 to 129, as though it were a school district. However, it may not receive aid, a grant, or revenue if a levy is required to obtain the money, except as otherwise provided in this section. Federal aid received by the state must be paid to the school, if it qualifies for the aid as though it were a school district.

(b) Any revenue received from any source, other than revenue that is specifically allowed for operational, maintenance, capital facilities revenue under paragraph (c), and capital expenditure equipment costs under this section, may be used only for the planning and operational start-up costs of an outcome-based school. Any unexpended revenue from any source under this paragraph must be returned to that revenue source or conveyed to the sponsoring school district, at the discretion of the revenue source.

(c) An outcome-based school may receive money from any source for capital facilities needs. Any unexpended capital facilities revenue must be reserved and shall be expended only for future capital facilities purposes.

K.MISSOURI

1993 Mo. S.B. 380, §18

1. By July 1, 1995, the state board of education shall have determined and implemented a process to pilot test a revised management system involving three school sites in the state. To be called "The New Schools Pilot Project", the board shall solicit volunteering school districts that will commit to participating in the project for a five-year period.

2. (1) At each of the three school sites in the project, the management of the school shall be vested in a five-member management team selected from bids received by a local board of education, or by a combination of cooperating local boards of education as stipulated by contract agreement between or among such local boards. In the selection of the management team, technical assistance may be provided to the local school board or boards, as requested, by the department of elementary and secondary education. The provisions of other law to the contrary notwithstanding, the state board of education may exempt from certification requirements not more than two members of the management team. One member of the five-member management team shall be designated as principal of the project school.

(2) No bid shall be selected which is submitted by a for-profit corporation. The percent of the school budget allocated for administrative purposes shall not exceed the average percent spent for administrative purposes for the most recently completed school year at other schools operated by the local school board or boards. No member of the management team shall profit in any way from the project other than from salaries received which shall be outlined in each bid submitted.

(3) Using the assessment system established under section 4 of this act, or until such assessment system is available, using the alternative indicators approved under the provisions of subsection 3 of section 4 of this act, the state board of education shall make every attempt when selecting schools for participation in this project to select one school which is performing above average, one school which is performing at the average and one school which is performing below average. Under no circumstances shall more than two schools be chosen from any one of the above categories

3. Staffing and personnel decisions for the schools in the project shall be vested in the management teams for the duration of the project; provided that all certificated staff shall be paid according to the salary schedule adopted by the district. All laws concerning teacher contracts shall apply.

4. No penalty provided for in, or pursuant to, section 9 of this act shall apply for any school participating in the project.

5. The state board of education shall waive, for participating schools, such rules and regulations as it may determine.

6. The commissioner of education shall develop a procedure for the evaluation of the new schools pilot project including recommended means for expanding desirable elements of the project to other school districts in the state.

I. NEW MEXICO

N.M. Stat. Ann. §§22-8A-1 - 22-8-15 (Michie 1993)

§22-8A-1. Short title

Sections 1 through 7 [22-8A-1 to 22-8A-7 NMSA 1978] of this act may be cited as the "Charter Schools Act".

§22-8A-2. Definitions

As used in the Charter Schools Act [22-8A-1 to 22-8A-7 NMSA 1978]:

A. " charter school" means an individual school within a school district, authorized by the state board to develop and implement an alternative educational curriculum and authorized by law to develop and utilize a school-based budget; and

B. "state board" means the state board of education.

§22-8A-3. Purpose

The purpose of the Charter Schools Act [22-8A-1 to 22-8A-7 NMSA 1978] is to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods and to enable individual schools to be responsible for site-based budgeting and expenditures.

§22-8A-4. Charter school authorized

A. The state beard may authorize any school within local school districts to become a charter school.

B. The state board may authorize the existence of a charter school for a period not to exceed five years. At the end of five years, a charter school may reapply to the state board to continue operation of the charter school.

C. The state beard shall not authorize the existence of more than five charter schools in the state.

§22-8A-5. Charter Schools created

A. Individual schools wishing to become charter schools shall apply through their local school board to the state beard for authorization to become charter schools. In transmitting the application to the state board, the local school board may include a recommendation regarding the establishment of that charter school.

B. The state board may authorize the existence of a charter school upon a finding that:

(1) not less than sixty-five percent of the teachers in the school have signed a petition in support of that school becoming a charter school;

(2) parents of children in the proposed charter school have had substantial involvement in the development of the charter school proposal and support the establishment of the charter school;

(3) the school proposing to become a charter school has submitted to the state board a comprehensive plan for implementing alternative education curricula at the school; and

(4) the school proposing to become a charter school shall provide a detailed proposed budget to meet anticipated educational and administrative costs of the charter school.

§22-8A-6. Charter schools; compliance with public school code

A charter school shall comply with all provisions of the Public School Code [this chapter, except 22-2-17, 22-2-18, 22-4-16, 22-9-7 to 22-9-16 NMSA 1978 and Articles 8A, 13A and 18A NMSA 1978]; provided that the charter school may request and the state board may grant a waiver of certain provisions of the Public School Code for the purpose of operating the charter school. The state board may grant waivers to a charter school for the purpose of providing class size and structure flexibility, alternative curriculum opportunities and alternative budget opportunities.

§22-8A-7. State board regulations

The state board shall adopt and publish rules to provide for the implementation of the Charter Schools Act [22-8A-1 to 22-8A-7 NMSA 1978].

§22-8-6.1. Certain school district budgets

In those school districts with authorized charter schools, each charter school shall submit to the local school board a school-based budget. The budget shall be based upon the projected total MEM at that school and the projected number of program units generated by students at that individual school. The budget shall be submitted to the local school board for approval or amendment. Upon final approval of the budget by the local school board, the individual school budget shall be included in the budget submission to the department of education required pursuant to the Public School Finance Act [22-8-1 to 22-8-42 55A 1978] and required pursuant to the Charter Schools Act [22-8A-1 to 22-8A-7 55A 1978].

§22-8-15. Allocation limitation

A. The department shall determine the allocations to each school district from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board, in each local school district with authorized charter schools, shall allocate the appropriate distributions of the public school fund to individual charter schools pursuant to each charter school's school-based budget approved by the local school board and the department. The local school board may retain an amount not to exceed the school district's administrative cost relevant to that charter school.

C. The local school board in each local school district with authorized charter schools, shall establish an individual charter school account to receive public school fund disbursements for each charter school.

M.WISCONSIN

1993 Wis. Laws 16 (creating Wis. Stat. § 118.40)

118.40Charterschool.

(1) REQUEST FOR APPROVAL. A school board may request the state superintendent for approval to establish up to 2 CHARTER SCHOOLS in the school district. The state superintendent shall approve the first 10 requests received. The state superintendent shall ensure that CHARTER SCHOOLS are established in no more than 10 school districts.

(1m) PETITION. (a) A written petition requesting the school board to establish a charter school under this section may be filed with the school district clerk. The petition shall be signed by at least 10% of the teachers employed by the school district or by at least 50% of the teachers employed at one school of the school district.

(b) The petition shall include all of the following:

1. The name of the person who is seeking to establish the charter school.

2. The name of the person who will be in charge of the charter school and the manner in which administrative services will be provided.

3. A description of the educational program of the school.

4. The methods the school will use to enable pupils to attain the educational goals under Section 118.01.

5. The method by which pupil progress in attaining the educational goals under Section 118.01 will be measured.

6. The governance structure of the school, including the method to be followed by the school to ensure parental involvement.

7. Subject to sub. (7) (a) and Sections 118.19 (1) and 121.02 (1) (a) 2, the qualifications that must be met by the individuals to be employed in the school.

8. The procedures that the school will follow to ensure the health and safety of the pupils.

9. The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population.

10. The requirements for admission to the school.

11. The manner in which annual audits of the financial and programmatic operations of the school will be performed.

12. The procedures for disciplining pupils.

13. The public school alternatives for pupils who reside in the school district and do not wish to attend or are not admitted to the charter school.

14. A description of the school facilities and the types and limits of the liability insurance that the school will carry.

15. The effect of the establishment of the charter school on the liability of the school district.

(2) PUBLIC HEARING; GRANTING OF PETITION. (a) If a school board has received approval under sub. (1), within 30 days after receiving a petition under sub. (1m) the school board shall hold a public hearing on the petition. At the hearing, the school board shall consider the level of employee and parental support for the establishment of the charter school described in the petition. After the hearing, the school board may grant the petition.

(b) Subject to sub. (1), a school board may grant a petition that would result in the conversion of all of the public schools in the school district to charter schools if all of the following apply:

1. At least 50% of the teachers employed by the school district sign the petition.

2. The school board provides alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school.

(2m) SCHOOL BOARD INITIATIVE. (a) If a school board has received approval under sub. (1), the school board may on its own initiative contract with an individual group to operate a school as a charter school. The contract shall include all of the provisions specified under sub. (1m) (b) and may include other provisions agreed to by the parties.

(b) A school board may not enter into a contract under par. (a) that would result in the conversion of all of the public schools in the school district to charter schools unless the school board complies with sub. (2) (b) 2.

(3) CONTRACT. (a) If the school board grants the petition under sub. (2) (a), the school board shall contract with the person named in the petition under sub. (1m) (b) 1 to operate the school as a charter school under this section. The contract shall include all of the provisions specified in the petition and may include other provisions agreed to by the parties.

(b) A contract under par. (a) or under sub. (2m) may be for any term not exceeding 5 school years and may be renewed for one or more terms not exceeding 5 school years. The contract shall specify the amount to be paid by the school board to the charter school during each school year of the contract. In any school year, the school board may not spend on average more per pupil enrolled in the charter school than the school board spends on average per pupil enrolled in the public schools, excluding charter schools, as determined by the state superintendent.

(c) A school board may not enter into a contract for the establishment of a charter school located outside the school district or a contract that would result in the conversion of a private school to a charter school.

(d) A school board shall give preference in awarding contracts for the operation of charter schools to those charter schools that serve children at risk, as defined in Section 118.15 (1) (b) 1.

(3m) SCHEDULE FOR ESTABLISHING. (a) By July 1, 1994, the state superintendent shall act on all requests to establish a charter school under sub. (1) that are received prior to July 1, 1994.

(am) A school board that receives approval to establish a charter school from the state superintendent under sub. (1) shall operate or demonstrate significant charter school by the cant progress toward operating beginning of the school year following the end of the calendar year in which the approval was received.

(b) If the state superintendent determines that a school board has violated par. (am), the state superintendent shall withdraw his or her approval to establish the charter school.

(4) CHARTER SCHOOL DUTIES AND RESTRICTIONS. (a) Duties. A charter school shall do all of the following:

1. If the charter school replaces a public school in whole or in part, give preference in admission to any pupil who resides within the attendance area or former attendance area of that public school.

2. Be nonsectarian in its programs, admissions policies, employment practices and all other operations.

(b) Restrictions. A charter school may not do any of the following:

1. Charge tuition.

2. Discriminate in admission or deny participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

(5) CHARTER REVOCATION. A charter may be revoked by the school board that contracted with the charter school if the school board finds that any of the following occurred:

(a) The charter school violated its contract with the school board.

(b) The pupils enrolled in the charter school failed to make sufficient progress toward attaining the educational goals under Section 118.01.

(c) The charter school failed to comply with generally accepted accounting standards of fiscal management.

(d) The charter school violated this section.

(6) PROGRAM VOLUNTARY. No pupil may be required to attend a charter school without his or her approval, if the pupil is an adult, or the approval of his or her parents, or legal guardian, if the pupil is a minor.

(7) LEGAL STATUS; APPLICABILITY OF SCHOOL LAWS. (a) A charter school is an instrumentality of the school district in which it is located and the school board of that school district shall employ all personnel for the charter school.

(b) Except as otherwise explicitly provided, chs. 115 to 121 do not apply to charter schools.

(8) AUDIT. The joint legislative audit committee may direct the legislative audit bureau to perform a financial and performance evaluation audit of the charter school program under this section. The legislative audit bureau shall file its report as provided under Section 13.94 (1) (b) by January 1, 2000.

ABOUT THE AUTHOR

Marc Dean Millot is a Senior Social Scientist in the RAND Corporation's Washington D.C. office, an attorney, and a member of the Virginia state bar. He specializes in the legal framework of public education. For the past several years Mr. Millot has studied the statutory framework of public education as part of RAND's analytical work for the New American Schools Development Corporation (NASDC) on systemic barriers to education reform, and for other private sponsors of the joint RAND/University of Washington Program for Reinventing Public Education. He developed the draft Memorandum of Understanding that serves as the basis of NASDC's efforts to negotiate large scale implementation of its new school designs in over a dozen major school districts across the country.

Mr. Millot is the author of several reports on charter schools, including: *How Does The Washington State Education Code Compare With The "Charter School" Statutes of Other States?*, RAND/University of Washington Program for Re-Inventing Public Education, August 1995, and *What Are Charter Schools?: An Introduction to the Concept and the Statutes*, RAND/University of Washington Program for Re-Inventing Public Education, April 1995.

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